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Oceans and the law of the sea

Letter dated 25 July 2014 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly

Pursuant to paragraph 80 of General Assembly resolution 60/30, we were reappointed as Co-Chairs of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, which was established pursuant to paragraph 73 of General Assembly resolution 59/24. In accordance with paragraphs 199 and 200 of General Assembly resolution 68/70, the Working Group met from 16 to 19 June 2014.

We have the honour to submit to you the Co-Chairs' summary of discussions at the meeting (see annex).

It would be appreciated if the present letter and the annex thereto could be circulated as a document of the General Assembly, under agenda item 75 (a).

(*Signed*) Palitha T. B. **Kohona**
Liesbeth **Lijnzaad**
Co-Chairs

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Annex

Co-Chairs' summary of discussions at the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction*

1. In paragraph 198 of its resolution 68/70, the General Assembly requested the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, within its mandate established by resolution 66/231 and in the light of resolution 67/78, and in order to prepare for the decision to be taken at the sixty-ninth session of the Assembly, to make recommendations to the Assembly on the scope, parameters and feasibility of an international instrument under the United Nations Convention on the Law of the Sea. To that end, the Assembly decided that the Working Group should meet for three meetings of four days each, with the possibility of the Assembly deciding that additional meetings would be held, if needed, within existing resources.

2. The first of these meetings of the Working Group was held at United Nations Headquarters from 1 to 4 April 2014, in accordance with paragraphs 199 and 200 of General Assembly resolution 68/70.[a] The second meeting was held at United Nations Headquarters from 16 to 19 June 2014, also in accordance with paragraphs 199 and 200 of General Assembly resolution 68/70.

3. The meeting of the Working Group was presided over by two Co-Chairs, Palitha T. B. Kohona (Sri Lanka) and Liesbeth Lijnzaad (Netherlands), appointed by the President of the General Assembly in consultation with Member States.

4. The Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Miguel de Serpa Soares, delivered opening remarks on behalf of the Secretary-General.

5. Representatives of 79 Member States, 2 non-Member States, 11 intergovernmental organizations and other bodies and 9 non-governmental organizations attended the meeting of the Working Group.

6. The Working Group adopted the provisional agenda without amendment (A/AC.276/10) and agreed to proceed on the basis of the proposed format and annotated provisional agenda and organization of work (A/AC.276/L.14).

7. In accordance with the format, and at the request of, the Working Group, the Co-Chairs prepared the present brief summary of discussions on key issues, ideas and proposals referred to or raised during the deliberations. The general considerations made throughout the week are reflected in paragraphs 8 to 22 below. The views expressed on the scope, parameters and feasibility of an international instrument are reflected in paragraphs 23 to 81 below.

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* The summary is intended for reference purposes only.

[a] A/69/82.

General considerations

8. Delegations recalled the importance of addressing the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Several delegations expressed their concern regarding the unprecedented rate of loss of marine biodiversity and the impacts of unsustainable practices on the marine environment. In particular, several delegations highlighted the accumulation of a number of threats to marine ecosystems beyond areas of national jurisdiction, including unsustainable resource exploitation, destruction of habitats, pollution, ocean acidification and climate change. A view was expressed that unsustainable fishing, in particular overfishing, illegal, unreported and unregulated fishing and certain destructive fishing practices, was the greatest threat to marine biodiversity in those areas. The importance of international action to help conserve species that were highly migratory, including tuna, turtles and whales, which were valuable economic resources for food and tourism, was highlighted.

9. Several delegations called for equitable utilization of marine resources, including benefit-sharing, and for taking into account the needs of developing countries.

10. Delegations recalled the commitment of States, in paragraph 162 of the outcome document of the United Nations Conference on Sustainable Development, "The future we want",[b] building on the work of the Ad Hoc Open-ended Informal Working Group and before the end of the sixty-ninth session of the General Assembly, to address, on an urgent basis, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea. Many delegations reiterated that the status quo was not acceptable, and called for building on the existing momentum, including the commemoration of the twentieth anniversary of the entry into force of the Convention, to enable the sixty-ninth session of the General Assembly to take a decision to start negotiations on a new implementing agreement under the Convention and address legal and regulatory gaps and gaps in governance.

11. In that regard, many delegations reiterated their commitment to the work of the Working Group, and welcomed the discussions at the meeting of the Working Group held in April 2014, which some delegations considered had shown the political will of the majority of States to move forward. Several delegations also welcomed the additional compilation of views of Member States on the scope, parameters and feasibility of an international instrument under the Convention, prepared and circulated pursuant to paragraph 201 of General Assembly resolution 68/70. Many delegations noted progress towards an emerging consensus on general issues, highlighting in particular convergence towards the fact that any new international instrument should fall under the Convention as a new implementing agreement and that it should recognize and respect, as well as avoid overlap and redundancy with, existing instruments and organizations. A view was expressed that prior to moving forward, the process and procedures for the Working Group to coordinate with existing regional and global regimes and organizations with mandates to regulate activities in areas beyond national jurisdiction would require discussion in order to

[b] Resolution 66/288, annex.

avoid duplication. Several delegations recalled that the focus of the discussions of the Working Group within the process established in resolution 67/78 should not be to negotiate issues, but rather to clarify them. (See also paras. 82-85.)

12. Delegations reiterated the importance of the Convention as the legal framework for addressing the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Several delegations recalled that the Convention provided the legal framework within which all activities in the oceans and seas must be carried out. Several other delegations emphasized the principle of the common heritage of mankind enshrined in the Convention, expressing the view that it applied to marine genetic resources beyond areas of national jurisdiction. Some delegations stated that marine biodiversity beyond areas of national jurisdiction was the common heritage of mankind. A view was expressed that those who still opposed the application of the principle of the common heritage of mankind in that context had the burden of proof to show what other options would be more appropriate to avoid the tragedy of the commons.

13. Many delegations expressed the view that the development of an international instrument under the Convention, in the form of an implementing agreement, was necessary to effectively address issues related to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Several delegations stated that such an agreement was the only feasible option to ensure that developing countries and small island developing States, in particular, benefited equitably from the conservation and sustainable use of biodiversity beyond areas of national jurisdiction. Many delegations also noted that an implementing agreement would ensure a coordinated, integrated and collaborative approach and assist in addressing shortcomings in implementation and existing gaps by establishing an overarching legal and institutional framework. To that end, several delegations suggested that an implementing agreement should aim at operationalizing the relevant principles of the Convention. Many delegations suggested that an implementing agreement could implement, strengthen and elaborate on obligations already embodied in the Convention, such as the general obligation to protect and preserve the marine environment, the obligation to protect and preserve rare or fragile ecosystems as well as the habitats of depleted, threatened or endangered species or other forms of marine life, the duty to cooperate on a global or regional basis for the protection and preservation of the marine environment, the duty to undertake environmental impact assessments and publish or communicate reports of the results of such assessments to the competent international organizations, as well as other relevant parts of the Convention related to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

14. Several delegations considered that, without an implementing agreement, it would be difficult to ensure coherent application of modern conservation and management principles; establish a network of multi-purpose marine protected areas in areas beyond national jurisdiction; undertake the strategic assessment of multiple activities that may have a cumulative impact on marine biodiversity beyond areas of national jurisdiction; develop a benefit-sharing regime for marine genetic resources; or effectively address the necessary cooperation and coordination between existing global and regional bodies. Several delegations also noted that the majority of existing bodies entrusted with competencies potentially affecting marine biodiversity beyond areas of national jurisdiction had a sectoral and/or regional mandate, and none had global responsibility concerning the subject as a whole. In

this regard, they considered that an implementing agreement would add value by providing a global approach to fill this gap and help move from fragmentation to coherence. It was also noted that holistic, ecosystem-based management was utilized in areas within national jurisdiction in many States, and that it was logical to adopt such an approach in areas beyond national jurisdiction through an implementing agreement under the Convention. Emphasis was placed by a delegation on developing a cooperation framework to facilitate marine scientific research.

15. Many delegations drew attention to the two existing implementing agreements to the Convention, namely the Agreement relating to the implementation of Part XI of the Convention and the United Nations Fish Stocks Agreement, as examples of the dynamic character of the Convention and its ability to identify and respond to new challenges.

16. A view was expressed that a new legally binding instrument should be limited to addressing legal gaps not implementation gaps.

17. Some other delegations indicated that they still remained to be convinced that an international instrument was necessary or that developing such an instrument was the best way to address issues relating to marine biodiversity beyond areas of national jurisdiction. In this regard, the question was raised as to how a new instrument would overcome the existing problems related to lack of political will, and what the added value would be in having a legally binding instrument. A view was also expressed that there was a need and an opportunity to strengthen commitments to conserve and sustainably use high seas living marine resources by using and building upon the structures and mechanisms already in place. It was further observed that the feasibility of an international instrument under the Convention would be dependent on advisability which would be determined based on the scope and parameters identified during the discussions and the principles that would guide future discussion.

18. Many delegations underscored that an international instrument should preserve the balance of interests, rights and obligations under existing instruments and should not affect the rights and freedoms of States in the various maritime zones. The freedom of marine scientific research was highlighted in that regard. The need to preserve the balance between competing uses of the oceans and between conservation and sustainable use objectives was also stressed. The need for equity and transparency was further raised. Some delegations noted that an international instrument under the Convention should take into account the interests and possible participation of those States that were not parties to the Convention. Several delegations suggested that universality should be a primary objective of an international instrument.

19. Some delegations sought further elaboration on the global versus the regional and sectoral dynamic and enquired about how a new international instrument would interact with mechanisms that already existed to regulate human activities beyond areas of national jurisdiction, build on existing achievements and ensure complementarity with existing instruments, such as the United Nations Fish Stocks Agreement, and with the work of existing organizations, such as regional fisheries management organizations, the International Maritime Organization (IMO) and the International Seabed Authority, without affecting their mandates or duplicating their activities. Many delegations emphasized, in that regard, that an international

instrument should recognize and respect and not duplicate or interfere with existing legal instruments and the mandates of existing organizations with sectoral mandates at the global and regional levels and their ongoing efforts. A view was expressed that the scope of a new agreement should be limited to areas for which existing institutions did not have a mandate, noting that there were already regimes for ecosystem-based management, environmental impact assessments and fisheries. In particular, some delegations emphasized that for fisheries, existing regimes and regional fisheries management organizations should be further utilized. It was suggested that it would be useful to more fully understand the extent of overlapping activities in the oceans. The need to avoid creating conflicting processes or a system that would allow for forum shopping was highlighted.

20. Several delegations expressed the view that an implementing agreement should address the relationship with existing instruments with clarity and fully recognize, complement and establish procedures for consultation and/or coordination between existing organizations with relevant mandates. A suggestion was made to develop an international managing mechanism similar to that for the Area, while taking full advantage of existing mechanisms. In that regard, another view was expressed that an international instrument should focus on the interrelationships among ecosystems and an understanding of the relationships between different activities and how to manage these relationships, instead of managing the activities themselves. While support was expressed for concerted action to manage the impacts of human activities on marine ecosystems, the view was expressed that it may not be necessary or appropriate to have only one process, a one-size-fits-all approach, for every activity as impacts varied across sectors based on each sector's particular circumstances and characteristics.

21. Some delegations stressed the importance of not creating onerous and burdensome governance structures. Rather, an efficient and effective governance structure that complements, and does not inhibit, existing efforts, including those of a sectoral and regional nature, was proposed.

22. Several delegations considered that a future implementing agreement should establish institutional mechanisms to assist States parties in implementing their obligations thereunder, and that given its positive contributions to date, the mandate of the International Seabed Authority could be expanded to oversee the implementation of a future implementing agreement. The need for sound-science informed decisions was underscored. It was also stated that any new agreement or structure should be flexible and adaptable enough to address new issues and challenges and that all stakeholders should be involved.

Scope, parameters and feasibility of an international instrument under the United Nations Convention on the Law of the Sea

Overall objective and starting point

23. Many delegations recalled that the overall objective of a new international instrument should be the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Many delegations emphasized that an international instrument under the Convention should address the package of issues set out in General Assembly resolution 66/231, namely, to address the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on

the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology.

24. Many delegations noted that the existing international framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction was fragmented and did not address cumulative impacts. In that regard, the package of issues was considered a basis to address all relevant activities in a comprehensive manner, with a view to resolving current fragmentation and lack of integration and to dealing with cumulative impacts in a cooperative and coordinated manner, as well as to address gaps in the current framework. In that regard, several delegations expressed the view that an international instrument should aim at providing a platform for improving cooperation and coordination among and between States and international organizations. A view was expressed that any new instrument should not be limited to coordination, but should also establish a strong framework for, inter alia, management of activities and capacity-building.

25. In relation to legal and regulatory gaps, several delegations highlighted the legal gap in relation to marine genetic resources, including questions relating to the sharing of benefits. Some delegations believed that only legal gaps in the current framework for relevant activities should be addressed in an international instrument, such as in relation to marine genetic resources. In their view, this would exclude issues relating to fisheries, for which the Convention, the United Nations Fish Stocks Agreement and regional fisheries management organizations and arrangements provided the legal framework. In particular, it was noted that regional fisheries management organizations and arrangements already had the mandate to implement area-based management tools, including marine protected areas, both in relation to particular stocks and the effects of fishing activities on vulnerable marine ecosystems in the high seas. Some other delegations indicated that, in the light of the impact of fishing activities on marine biodiversity and the need to implement an ecosystem approach, such activities should be included in an international instrument. Another suggestion was made that existing fisheries-related instruments and organizations could be further utilized to minimize impacts of fishing activities on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

26. In relation to the need to address gaps in participation in, and implementation of, existing instruments, some delegations noted that a new international instrument would not, in itself, address these challenges, which they believed were mostly due to a lack of political will. Instead, they suggested that such gaps should be addressed by strengthening cooperation among States and international organizations. It was further pointed out that a new international instrument would exist in parallel to existing instruments but, as in the case of those instruments, would apply only to States that would become parties to it. Hence a new international instrument would not necessarily ensure universal participation, but might generate duplication. Another view was expressed that States that were not parties to existing instruments, such as the United Nations Fish Stocks Agreement, would not necessarily reject a new instrument.

27. It was noted that an examination of each element of the package to determine where gaps existed would be helpful and would likely lead to the conclusion that an

implementing agreement was the appropriate solution for each element of the well-balanced and interlinked package.

28. While several delegations observed that it was sufficient at this stage of the process to identify the broad scope and parameters of a possible instrument without detailing all specific areas that should be included or excluded, some delegations expressed the need for further detail, clarity and predictability on the scope of the proposed instrument.

Legal framework for an international instrument

29. Many delegations reiterated that the Convention provided the legal framework for an international instrument governing the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. In that regard, it was noted that although the term "biodiversity" was not used in the Convention, it clearly addressed marine living resources and referred to rare or fragile ecosystems, habitats, species and other forms of marine life, which encompassed biodiversity. Some delegations also underscored that the two implementing agreements to the Convention also formed part of this legal framework along with other relevant instruments, including Agenda 21, as well as the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization thereto. It was suggested, in particular, that the definition of biodiversity contained in the Convention on Biological Diversity could be used in the context of a new implementing agreement.

30. Many delegations reiterated that an international instrument should not duplicate the existing legal framework, but rather complement the Convention and fill gaps in governance and legal and regulatory gaps by strengthening and further elaborating existing provisions and operationalize relevant principles found in the Convention and customary international law. Many delegations also stressed the importance of preserving the integrity and balance of rights and duties under the Convention.

Relationship to other instruments

31. Many delegations expressed the view that a new instrument should complement, rather than undermine, duplicate or change existing instruments, and should enhance cooperation and coordination in that regard and facilitate coherence. Several delegations stressed the need to ensure that the relationship and complementarity with existing legal frameworks, in particular the Convention, was clearly established. In that regard, some delegations drew attention to the need to maintain the balance between the rights and responsibilities of States under various instruments. Some delegations noted that existing instruments and mechanisms had been developed in harmony with the Convention, so the conditions already existed to achieve complementarity between existing mechanisms. Several delegations suggested that harmony with existing instruments could be achieved by including a clause in the instrument to clarify its relationship with the Convention and avoid incompatibility. Examples of how this was achieved under article 2 of the Part XI Agreement and article 4 of the United Nations Fish Stocks Agreement were provided. The suggestion was made by several delegations that such a pragmatic approach could be taken in an international instrument under the Convention.

32. A view was expressed that achieving harmony should be an important objective of an international instrument. Some delegations noted, in this context, the difference between seeking harmonization through cooperation and coordination and trying to achieve this through a new mechanism. It was suggested that a new mechanism could lead to duplication and weakening of existing mandates, or had the potential to create conflicting authorities and actions arising under different instruments. In that regard, it was noted that coordinating the work of existing bodies should be achieved by strengthening their mandates.

33. Clarification was sought by some delegations as to how, in practice, a new legally binding instrument could enhance cooperation and coordination between existing mechanisms. In that regard, it was stated that a new mechanism could be recommendatory or supervisory in nature by providing guidance to existing organizations, but would not interfere with the decision-making or management functions of those organizations. In this context, some delegations stated that a new mechanism could support the work of existing organizations through reporting, sharing of information and forwarding recommendations that those organizations could implement at the regional or global sectoral levels with a view to facilitating harmonious and coherent overall objectives. It was suggested that an international instrument should be flexible enough for regions and sectors to implement it in accordance with their circumstances. It was noted that for a new entity to give recommendations to existing organizations would necessarily entail duplicating the work of those sectoral and/or regional organizations, which already had the expertise over the issues they were mandated to address. A suggested alternative was for a new mechanism to promote cooperation and coordination without a directing or oversight role.

Guiding principles and approaches

34. Delegations reiterated their support for the package approach reflected in General Assembly resolution 66/231 with a view to addressing all issues on an equal footing. However, different views continued to be expressed on the scope of the package and on the gaps a new international instrument should address.

35. Many delegations stressed the need for a global integrated approach, as that would provide global overall objectives and standards to be implemented at the regional and global sectoral levels. Some delegations expressed the view, however, that any instrument promoting a global approach to fisheries would be incompatible with the regional approach set forth in the United Nations Fish Stocks Agreement. Some delegations also noted that different situations and needs prevailed in different regions of the oceans, pointing to the fact that a regional approach remained preferable. It was further observed that under the United Nations Fish Stocks Agreement, regional fisheries management organizations had the mandate to establish marine protected areas to protect fish stocks and vulnerable marine ecosystems. These protected areas applied to the members of the particular regional fisheries management organization and all parties to the United Nations Fish Stocks Agreement. Accordingly, there was no need to duplicate the competence of regional fisheries management organizations in that regard in a new international instrument. In this respect, several delegations noted that the added value of a new instrument would be to identify globally recognized sensitive areas and acknowledge existing marine protected areas, such as those established by regional fisheries management organizations and other regional organizations, and give them global recognition.

A view was expressed that while such an approach would be acceptable in relation to the work of regional seas organizations, it would not be in the case of fisheries for which a global framework already existed.

36. Several delegations expressed the view that it was not necessary to choose between global and regional approaches, since both were mutually supportive through regional implementation of global goals and commitments. In this context, they suggested that the value of an international instrument would lie in its promotion of a collaborative approach and the identification of common principles, for example, to identify areas in need of protection, conduct environmental impact assessments and implement an integrated approach and ecosystem approach, to be implemented by regional and global sectoral organizations. These delegations expressed the view that such an approach would not require a cumbersome institutional structure. In that regard, some delegations emphasized the need to avoid establishing a costly and cumbersome institutional mechanism.

37. Some delegations expressed the view that the mandates of existing institutions could be analysed with a view to determining how to optimize their respective roles. In particular, several delegations stated that the mandate of the International Seabed Authority could be interpreted more broadly or expanded, in particular in relation to marine genetic resources. On the other hand, a view was expressed that this would dilute the mandate of the Authority, which, in addition, may not have the necessary expertise.

38. A suggestion was made that a single reporting entity be established under an international agreement. Another delegation supported a centralized monitoring system. Some delegations expressed concerns over any mandate in a new international instrument concerning monitoring, control and surveillance. Several delegations indicated that any such mandate would be limited to monitoring the implementation of conservation and management objectives within an area. It was suggested that an international agreement include a dispute resolution mechanism to enhance implementation and enforcement.

39. The need to apply modern governance principles and ensure open decision-making was emphasized. In particular, some delegations highlighted the need for adaptive rules, based on the latest scientific data. The need for additional research and the standardization of data was also underscored.

40. While many delegations highlighted their preference for a legally binding instrument in order to establish an effective and strong regime, some delegations indicated that they did not see the need for a legally binding instrument, favouring instead the strengthening of cooperation and coordination through existing mechanisms. Some delegations noted the need to mirror the legally binding nature of relevant existing instruments in order to ensure that an international instrument on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction was on an equal footing with those instruments.

Scope ratione personae

41. With regard to the scope *ratione personae* of an international instrument, several delegations emphasized that any implementing agreement should be open to all States, regardless of whether or not they were parties to the Convention, with the aim of achieving universal participation and comprehensive conservation and

sustainable use of marine biodiversity beyond areas of national jurisdiction. Some delegations recalled that any new agreement would only bind its parties.

Scope ratione loci

42. Regarding the scope *ratione loci* of an international instrument, several delegations stressed that it should cover the Area and the high seas. Several delegations also emphasized that any actions taken in the high seas under such an instrument needed to fully respect the sovereign rights of, and be taken in coordination with, those coastal States with continental shelves extending beyond 200 nautical miles. It was pointed out, in this regard, that coastal States had the responsibility for the protection and preservation of the marine environment of the continental shelf.

Scope ratione materiae

43. Regarding the scope *ratione materiae* of an international instrument, some delegations stressed the need to agree on definitions of terms. Delegations continued to express divergent views on whether fisheries should be included in the scope of an international instrument. In particular, some delegations stressed that fisheries were already covered by the United Nations Fish Stocks Agreement, which was being implemented by States through regional fisheries management organizations, and should therefore not be considered within the scope of an international instrument. It was noted, however, that the geographic scope or species coverage of some existing fisheries bodies was limited. Some delegations further indicated that fisheries were critical to marine biodiversity and, bearing in mind the need to implement an ecosystem approach, should therefore be addressed in an international instrument. In that regard, several delegations expressed the view that an international instrument should not exclude any activity and should adopt a cross-sectoral and ecosystem approach. Several other delegations noted that because fishing activities had an impact on marine biodiversity beyond areas of national jurisdiction, the relationship between a new instrument and existing agreements in that regard should be addressed clearly. As such, they advanced that a new instrument would not regulate fishing but rather should recognize and complement and establish procedures for consultations and/or coordination with existing relevant global and regional organizations/arrangements. It was suggested, in this context, that an international instrument would not necessarily include a separate chapter on fisheries in an attempt to rectify shortcomings in the United Nations Fish Stock Agreement as this might re-open issues that had already been settled.

44. Several delegations noted that the determination of the precise scope of each element of the package should be carried out during the future negotiations for an implementing agreement under the Convention.

45. Marine genetic resources, including questions on the sharing of benefits. In relation to marine genetic resources, it was highlighted that such resources were of scientific and commercial interest and played an important role in ecosystem functioning, including in climate regulation. In that regard, it was noted that research on those resources and their sustainable use was of interest to society as a whole and the regulation of relevant activities should be a priority. Several delegations acknowledged that a "first come, first serve" approach to resources undermined sustainability. The need to address both equitable sharing of the benefits

arising from the utilization of those resources, in light of the knowledge showing commercial exploitation of these resources, as well as the conservation and management of those resources, including with a view to ensuring that the collection of specimens would be sustainable and avoiding damage to ecosystems, was highlighted by many delegations. In particular, several delegations stated that governance gaps allowed those States with technical capabilities and resources to exploit these resources without sharing the benefits, and this could also contribute to damaging the marine environment. It was observed, however, that acquiring marine genetic resources in areas beyond national jurisdiction often did not require ongoing access or ongoing harvesting and may have almost no impacts on marine biodiversity in those areas.

46. Many delegations considered that such a legal gap existed in the current legal framework in respect of marine genetic resources of areas beyond national jurisdiction, in particular in relation to access and the sharing of benefits arising from their exploitation, while some delegations considered that there was no such gap. Different views were expressed on whether the gap existed in respect of such resources of both the Area and the high seas or only in respect of those of the Area. While a view was expressed that an international instrument could address marine genetic resources of the Area, as this was where a clear legal gap existed, some delegations stressed that an international instrument should apply to marine genetic resources of both the seabed and the water column in order to ensure a uniform regime. Several delegations expressed the view that an implementing agreement should provide for substantial arrangements for equitable access to and the sharing of benefits from marine genetic resources, capacity-building and the transfer of marine technology, so as to ensure that developing countries could benefit from the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

47. Different views continued to be expressed regarding the legal regime applicable to marine genetic resources of areas beyond national jurisdiction. Several delegations reiterated their view that, in accordance with the Convention and General Assembly resolution 2749 (XXV), the resources of the Area were the common heritage of mankind, and that activities in the Area shall be carried out for mankind as a whole, taking into particular consideration the interests and needs of developing States. Thus, in their view, the principle applicable to marine genetic resources of areas beyond national jurisdiction was that of the common heritage of mankind and a specific legal regime needed to be developed based on that principle. Several delegations emphasized, in that regard, the importance of incorporating the provisions in articles 136 and 137 of the Convention in an implementing agreement.

48. Some other delegations reiterated their view that the principle of the common heritage of mankind did not apply to marine genetic resources of areas beyond national jurisdiction, and that the freedom of the high seas applied to those resources instead. It was also noted that if marine scientific research was involved, the provisions of the Convention on marine scientific research applied as well. It was stressed in this regard that designating any part of the high seas water column as the common heritage of mankind would be inconsistent with the Convention and would require an amendment, which should be avoided. Several other delegations acknowledged the importance of both principles and stressed that, while they could not support the application of the common heritage of mankind to marine genetic resources of areas beyond national jurisdiction, as those resources were not included

in the definition of "resources of the Area" under the Convention, they were nevertheless open to adopting a pragmatic approach and discussing practical measures for benefit-sharing in relation to both non-commercial and commercial activities, which would be without prejudice to either of the legal regimes. It was suggested that such an approach would allow for the application of an international instrument to the genetic resources of both the Area and the high seas. Some delegations, however, emphasized the need to resolve the issue of the applicable legal regime to ensure legal certainty.

49. Some delegations expressed the view that an access and benefit-sharing regime relating to marine genetic resources of areas beyond national jurisdiction was not needed or even desirable. In that regard, it was observed that the greatest benefits to humanity from marine genetic resources of areas beyond national jurisdiction would stem from the worldwide availability of products and scientific knowledge and the contributions those products and information brought to advancements in public health, food affordability and science, all of which could be impeded by a benefit-sharing regime. Therefore sharing of scientific information and the transfer of technology should be promoted instead.

50. Many delegations, however, stressed the need for a regime for the sharing of benefits arising from the utilization of marine genetic resources of areas beyond national jurisdiction. Some delegations underlined that an international instrument should cover both monetary and non-monetary benefits and emphasized the need for equitable sharing. It was suggested that all of the activities in the value chain should be taken into consideration. Some delegations highlighted the need for sharing of information and access to data and research results, capacity-building and scientific collaboration related to the exploration, protection and study of marine genetic resources. The need to ensure and promote the effective participation of developing countries in partnerships between scientific research institutions and private biotechnology companies was also underscored by several delegations. The importance of developing science and technology, including transfer of marine technology, was also highlighted. One delegation queried whether developing countries that may not become a party to a new implementing agreement would also benefit from an access and benefit-sharing regime.

51. Some delegations stressed the need to balance the respective interests with respect to marine genetic resources so as not to discourage economic activities but rather promote and not create disincentives to further research, investment and innovation. Some delegations also emphasized that an international instrument should not discourage the legitimate activities already taking place in accordance with the Convention, including with regard to marine scientific research, navigation, fishing and the transfer of technology.

52. Several delegations stressed that marine scientific research activities should not interfere with other lawful activities in areas beyond national jurisdiction and had to conform with the rules established to protect and preserve the marine environment. Questions were raised as to how any arrangement for access and benefit-sharing would take into account the varied needs and practices of different sectors so as to not impede research and development; whether any regulation or condition would apply to access to or transfer of the resources; what benefits would be shared; when would they be shared and with whom; and who would make those decisions.

53. A suggestion was made that the geographic origins of marine genetic resources and their use in patents be better overseen. Several delegations proposed, in that regard, that an international instrument include: disclosure requirements; mechanisms that encourage, rather than discourage, cooperation and compliance with access and benefit-sharing arrangements; mechanisms for data-sharing, such as databanks, sample collections and open-access gene pools; and incentives for the development of such mechanisms on a more comprehensive basis.

54. Some delegations noted that the work under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, in particular its article 10, the International Treaty on Plant Genetic Resources for Food and Agriculture and the regime of the Area could be considered as it facilitated access and benefit-sharing without impeding research and commercial development. At the same time, it was pointed out that these instruments may not be directly and fully applicable to marine genetic resources of areas beyond national jurisdiction. An observation was made that none of the existing approaches to benefit-sharing could be applied to marine genetic resources of areas beyond national jurisdiction, where resources were not subject to case-by-case mutually agreed terms, but where the users and providers could span many different sectors. The importance of tailoring any model to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction was highlighted in that regard. A view was expressed that, even if it were possible to design a benefit-sharing regime that encompassed all marine genetic resources and all uses across different sectors, the transaction costs of such a system might be so high that they might impede research and developments from which humanity at large benefited.

55. Several delegations called for the expansion of the mandate of the International Seabed Authority to manage marine genetic resources of areas beyond national jurisdiction and access and benefit-sharing related thereto. It was also suggested that an implementing agreement could build on the role of the International Seabed Authority. Some delegations did not support an expansion of the mandate of the Authority. It was also queried whether this was practically feasible, given the wide range of sectors that might be involved in deriving benefits from marine genetic resources. Some delegations stated that issues relating to intellectual property rights and patent law should be dealt with by the competent forums, such as the World Intellectual Property Organization.

56. Some delegations suggested that a public trusteeship could be established to collect and distribute royalties and benefits relating to marine genetic resources of areas beyond national jurisdiction.

57. A suggestion was made that developing definitions, even if provisional, relating to marine genetic resources would be useful to create a common basis and understanding. It was noted that such definitions could address the exact nature of the benefits to be shared, what types of activities would be subject to benefit-sharing, to whom the benefits would go and on what basis they would be distributed.

58. It was suggested that the details of an access and benefit-sharing arrangement would need to be resolved during the negotiations for an international instrument.

59. Measures such as area-based management tools, including marine protected areas. Several delegations pointed out that the establishment of marine protected areas, including networks of such areas, was a commitment included in a number of international instruments, including Aichi Target 11 in the context of the Convention on Biological Diversity. Several delegations noted the scientific and technical work already undertaken in the context of that Convention for the identification of ecologically or biologically significant marine areas and in the context of the International Seabed Authority with regard to areas of particular environmental interest. Some delegations expressed the view that the definition of "marine protected areas" remained unclear and emphasized the need for clarity in the light of the wide range of area-based management tools already available. In this respect, some delegations suggested that an international instrument could include a globally consistent definition based on modern principles, such as the precautionary and ecosystem-based approaches. It was proposed, in that regard, that an international instrument would only deal with marine protected areas established with biodiversity conservation objectives, not with area-based management tools used for other purposes, such as, for example, management of fish stocks or fish stocks recovery. It was recalled that decades of work had been put into establishing marine protected areas at the national level on the basis of the definitions of the International Union for the Conservation of Nature. It was observed, in that regard, that experience showed that marine protected areas were not a panacea for all problems, but were one useful tool in a toolbox that included other area-based management tools. It was highlighted that networks of marine protected areas need not comprise no-take areas only and, in fact, the largest percentage of such marine protected areas under national jurisdiction comprised multiple purpose managed areas.

60. Several delegations stressed that there were a number of international organizations that already had the competence to use area-based management tools in areas beyond national jurisdiction. In particular, in relation to the use of area-based management tools in fisheries management, it was recalled by some delegations that regional fisheries management organizations had the mandate to establish marine protected areas, in accordance with the United Nations Fish Stocks Agreement. In that regard, some delegations emphasized the need to take into account and coordinate with existing regional and sectoral stakeholders already operating in areas beyond national jurisdiction. Several delegations reiterated the importance of respecting the mandates of existing organizations in order to avoid encroachment or duplicative efforts, given their specific mandates and expertise, particularly in the context of marine protected areas.

61. While the ongoing initiatives at regional and global sectoral levels were considered positive steps by some delegations, it was noted that coordination was needed in that regard. Several delegations noted that an international instrument could provide for the broader recognition and coordination of existing efforts, which were otherwise often limited in terms of sector or geographic coverage. It was noted in this context that the marine protected areas established by regional fisheries management organizations were already globally recognized, as these measures applied to all parties to the United Nations Fish Stocks Agreement and that any new instrument should be limited in this regard to measures for the protection of the marine environment. Several delegations stressed that marine protected areas established by regional bodies could have enhanced protection as part of a global

network under an international instrument, as these measures could be binding on all parties to such an instrument.

62. The need for guidelines on the designation of marine protected areas to ensure compatibility between different bodies was noted. It was suggested, in that regard, that an international instrument could further elaborate on the duty to cooperate under article 197 of the Convention. In particular, some delegations noted that an international instrument could aim to develop a framework of recommendations, standards and procedures, criteria and guidelines for existing bodies to identify and manage marine protected areas.

63. Several delegations suggested that an international instrument would facilitate the establishment of a global network of ecologically representative marine protected areas through the identification and designation of globally recognized areas, the establishment of management objectives for the designated areas, the monitoring and surveillance of activities in those areas, and procedures for the recognition and establishment of marine protected areas to be implemented by relevant regional or global sectoral organizations, drawing upon scientific and technical information. They suggested that this approach would bring coherence to the identification of areas requiring protection in areas beyond national jurisdiction. Several delegations noted, in that regard, that the absence of an overarching framework to achieve that goal constituted a legal gap, which could be addressed on the basis of the model provided by the United Nations Fish Stocks Agreement with regard to the relationship between regional and global frameworks. Several delegations expressed support for the development of a governance regime/global mechanism to enable the establishment of high seas marine protected areas through a legitimate intergovernmental process, based on scientific criteria. Many delegations emphasized that marine protected areas could not be established in areas beyond national jurisdiction unilaterally, without a global treaty or agreement, and an international instrument would therefore ensure legitimacy.

64. The question was raised as to how and by whom marine protected areas would be designated. Several delegations proposed that a body be established under an international instrument to identify objectives for area-based management and designate marine protected areas, including through recognition of marine protected areas established at the regional level. Some delegations expressed concerns regarding the establishment of an overarching body or mechanism to that end, including the possibility of duplication and the weakening of existing mandates, the imposition of additional requirements by a new regulatory body or the application of regional measures to non-parties to the instrument. Some delegations sought clarification on whether the mandate of a new body would be limited to agreeing on the general principles and method for the designation of marine protected areas by regional and global sectoral organizations or whether it would entail the adoption of specific measures or recommendations to existing organizations for them to decide on the appropriate measures. Another delegation noted the existing legal certainty gained from binding measures adopted by regional or global sectoral bodies and queried how this would be affected by the binding measures adopted by a new mechanism. It was also noted that the jurisdiction of the coastal State to establish marine protected areas within areas of national jurisdiction did not apply on the high seas and that any new instrument would need to be based on the exclusive jurisdiction of flag States on the high seas. Some delegations pointed out, in that regard, the difficulty of making marine protected areas established by an

overarching body binding on States that had not become party to the international instrument. In this regard, a preference was expressed for the establishment of marine protected areas by States through existing organizations. The need for some degree of centrality to avoid fragmentation at the regional level and for coherence among regional approaches, given the common nature of the resources, was noted. It was suggested, in that regard, that it would be necessary to analyse regional undertakings to assess whether they were compatible with the global approach envisaged by the Working Group.

65. Environmental impact assessments. With regard to environmental impact assessments, it was pointed out that such assessments were an effective tool to ensure the sustainability of activities in areas beyond national jurisdiction. Some delegations expressed the view that an international instrument would facilitate the use of such assessments in the context of globally agreed standards.

66. Several delegations reiterated the obligation under article 206 of the Convention to assess the potential effects of activities that may cause substantial pollution of or significant and harmful changes to the marine environment. Some delegations indicated that environmental impact assessments were already implemented through national measures, in accordance with article 206. It was pointed out, however, that this obligation was only partially implemented and carried out on an activity-specific basis, without the consideration of cumulative impacts of multiple stressors on the marine environment. It was also observed that the current approach did not allow for a coherent assessment of impacts in areas beyond national jurisdiction. In that regard, several delegations emphasized that an implementing agreement should reiterate and strengthen the obligation in article 206 so that potential impacts were considered before activities were undertaken, including cumulative and strategic assessments of such impacts. Attention was also drawn by some delegations to the need to assess the potential impacts of emerging and future uses of the oceans, such as carbon sequestration. A view was expressed that any gaps relating to implementation were a result of a lack of political will, which would not be rectified by a new instrument.

67. Some delegations proposed that an international instrument could elaborate a framework for environmental impact assessments and define uniform standards for the preparation and review of such assessments for activities that pose a threat to marine biodiversity in areas beyond national jurisdiction, in order to achieve greater coherence and coordination. There was a need, in this regard, in the view of some delegations, for guidance on standards and procedures for assessment, reporting, monitoring and management of information resulting from assessments, including a centralized mechanism for information-sharing. It was suggested that the nature of a new instrument could be recommendatory in this regard and could be based on best practices and provide technical support. Another delegation noted that a new agreement should not add to the burden of States with regard to environmental impact assessments. Some delegations stressed the need for transparency so that assessments were available for comment by States.

68. Questions were raised by some delegations related to the conduct and reporting of environmental impact assessments, including how activities subject to an assessment would be defined, who would be responsible for assessing impacts, including the role of flag States and intergovernmental organizations, and possible conflicts between a newly established body envisioned under an international

instrument and existing bodies with sector- or area-specific assessment requirements. A delegation queried whether ongoing activities would be subject to assessments.

69. Several delegations noted the need to consider the threshold that would apply for the obligation to conduct an environmental impact assessment with respect to different activities to take effect. Some delegations noted, in this context, that article 206 of the Convention already contained an established threshold. Another delegation suggested that some activities might not meet the threshold and not require an environmental impact assessment. It was suggested that activities with little or no expected impact might only be subject to monitoring and reporting obligations. It was also considered that there may be some types or groups of activities that could already be considered as not requiring environmental impact assessments if, for example, they were sufficiently managed or the impacts were already known. One delegation suggested taking stock of the experience of the International Seabed Authority on thresholds and baseline obligations for environmental impact assessments.

70. Some delegations noted challenges in assessing the cumulative impact of activities or in trying to address these difficulties in a new international instrument. It was suggested, in this context, that strategic assessments were suitable to address a broad range of activities. Some delegations observed that details regarding the procedural aspects of the conduct of environmental impact assessments would need to be resolved during the negotiations of an instrument.

71. Capacity-building and the transfer of technology. Many delegations agreed that capacity-building would be an important component of an international instrument in order to support implementation of the rights and obligations under existing instruments. Some delegations noted, in this context, that the aim of capacity-building measures and transfer of technology should be to develop the capacity of States to participate in existing global and regional instruments, including through the sharing of scientific knowledge, expertise and technology. It was important, in this regard, for developing States to be able to exercise their rights under the law of the sea, including through access to resources. The disparities between developed and developing States were noted in that regard.

72. Some delegations stressed the importance of establishing facilitating frameworks for capacity-building to strengthen implementation of an international instrument and achieve the objective of conservation and sustainable use. Some delegations also emphasized the importance of ensuring that developing States were partners in capacity-building initiatives. The role of capacity-building and transfer of technology in strengthening cooperation and coordination was also underscored. It was suggested that capacity-building and transfer of technology could be facilitated by donor/recipient models and private/public partnerships.

73. Some delegations acknowledged in this regard the guidelines and ongoing activities of intergovernmental organizations to improve capacity-building and transfer of technology, including those of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization and the Convention on Biological Diversity. National activities or programmes to support capacity-building and transfer of technology to developing States were also mentioned. The need for political will in the implementation of guidelines and programmes on capacity-building and transfer of technology was stressed.

74. It was noted that the Convention already included provisions on capacity-building and transfer of marine technology, and questioned whether additional provisions in a new instrument would enhance implementation, which was lacking due to an absence of political will.

75. The critical importance of the transfer for technology as an essential tool of capacity-building was highlighted by some delegations. In particular, it was noted that States possessing advanced technologies already had an obligation under Part XIV of the Convention to share those technologies with developing countries. A delegation called attention to its ongoing activities to implement Part XIV of the Convention. However, it was emphasized that Part XIV was the least implemented part of the Convention. It was observed, in this context, that implementation of the obligations under the Convention by developing States was not contingent upon the receipt of capacity-building and the transfer of technology. The importance of balancing the interests of the holders of technology and the needs of developing States was emphasized. Some delegations drew attention to the 2003 Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, developed in accordance with article 271 of the Convention, and its guiding principle that transfer of marine technology must be conducted on fair and reasonable terms and conditions and enable all parties to benefit, on an equitable basis, from developments in marine science-related activities. It was also suggested that Part XIV could be incorporated mutatis mutandis in an international instrument.

Feasibility of an international instrument under the United Nations Convention on the Law of the Sea

76. Delegations approached the question of feasibility from a number of perspectives. Some delegations reiterated that the question of feasibility was linked to the issues of the scope and parameters of an international instrument. In that regard, it was noted that feasibility depended on agreement on what the problems were and on the best way to address them. It was also observed that a sense of the direction that a prospective instrument would be taking and its broad outline would provide comfort on the feasibility issue. In that regard, the view was expressed that there was a need for further discussions on the scope and parameters before any decision was made to negotiate an international instrument. It was also observed that the issue of feasibility was linked to the ability of States to participate in a prospective international agreement.

77. Several delegations stressed that the issue of feasibility was linked to the political will of States, noting that an overwhelming majority of States had demonstrated the political will to decide to begin negotiations on an international instrument. While some delegations were of the opinion that a new instrument would not significantly address the problems of lack of political will in the implementation of existing arrangements, other delegations expressed the conviction that the negotiation and conclusion of an international instrument would build the momentum needed to increase political will to act. The view was expressed that political will to engage in negotiations would depend largely on the procedural guarantees to be established for the achievement of a common goal.

78. Many delegations noted that given that two implementing agreements already existed under the Convention, developing another implementing agreement under it would be politically, legally and technically feasible. Many delegations also stated

that legal feasibility was evidenced by the existence of gaps and fragmentation in the current framework, and by the need for the international community to address those gaps. In that regard, it was reiterated that the status quo was not acceptable. In particular, the view was expressed that an instrument based on suitable modest, non-duplicative governance arrangements that could assist in generating efficiencies and addressing present and emerging threats to marine biodiversity beyond areas of national jurisdiction was feasible. It was further observed that a legal regime for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction would ensure predictability and uniformity in the conduct of States.

79. While noting that it would be desirable for an international instrument to enjoy universal participation, a delegation observed that such a goal may only be achieved if an international instrument focused on legal gaps.

80. It was indicated that an international instrument should be limited to the areas for which existing institutions did not have a mandate. In this regard, a suggestion was made to discuss the existing international regimes and relevant international bodies engaged in the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction in depth. To this end, the participation of competent international organizations, including the Food and Agriculture Organization of the United Nations, IMO and regional fisheries management organizations in the Working Group was encouraged.

81. Some delegations stated that they remained unconvinced of the feasibility of concluding an implementing agreement under the Convention, noting that feasibility must also take into account whether a future instrument would achieve the goal of bringing a speedy solution to the problems faced in the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. It was noted, in that regard, that lack of support for an implementing agreement should not be mistaken for a lack of commitment to lasting and meaningful protection for the ocean and its resources. It was further observed that if the aim of an international instrument was to promote enhanced cooperation and coordination, and to develop recommendations to that end, those actions could be done through existing bodies, including the regional and sectoral bodies themselves and through the General Assembly. In that regard, a view was expressed that the best way to enhance coordination and cooperation across regions and sectors was to start coordinating and cooperating across sectors, not to enter into lengthy and costly negotiations on a new instrument. Some delegations further expressed the view that coordination and implementation depended on States themselves through their participation in diverse forums, and not on the establishment of overarching rules and institutions. While it was observed that more needed to be done, some delegations emphasized the progress that had been made through existing bodies and processes in recent years, both in legally binding and non-legally binding form, in particular in the fisheries sector with regard to the implementation of an ecosystem approach and increased reliance on science, as well as in the shipping sector with, for example, the designation of special areas and the reduction of discharge of garbage at sea. It was further observed that willing States were already capable of establishing marine protected areas on the high seas and the question was raised as to how a new agreement would overcome unwillingness on the part of some States to establish such areas beyond national jurisdiction.

Next meeting of the Ad Hoc Open-ended Informal Working Group

82. In considering the way forward in the work of the Working Group and the process established in paragraphs 198 and 199 of resolution 68/70, many delegations proposed that the next meeting of the Working Group scheduled to be held from 20 to 23 January 2015 be dedicated to the finalization of recommendations to the General Assembly. In this regard, delegations requested the Co-Chairs to prepare a draft document containing elements of recommendations to the General Assembly for circulation to Member States in advance of that meeting. Delegations emphasized that the draft elements should be based strictly on the package of issues set out in resolution 66/231 and include areas of convergence that had emerged through the discussions. Several delegations also suggested that the draft elements establish the principles upon which the negotiations for an instrument would be conducted, such as the value of consensus and conduct of negotiations in good faith. Some delegations also emphasized that a prospective instrument should not seek to impose obligations contained in the Convention on States that had not yet consented to be bound by its provisions. It was also recalled that being a party to the Convention should not be a prerequisite to be a party to an eventual implementing agreement.

83. While several delegations expressed the view that the draft document should include a road map beyond the next meeting of the Working Group, other delegations expressed concern over the inclusion of such a road map, as they considered that that would prejudge the decision of the General Assembly at its sixty-ninth session.

84. Several delegations requested the opportunity for Member States to submit their views or additional views on the scope, parameters and feasibility of an international instrument, in accordance with paragraph 201 of resolution 68/70. The Co-Chairs indicated that a letter inviting States to provide such views and suggestions on possible elements of recommendations to the General Assembly would include an indicative time frame to do so.

85. Some delegations suggested that the possibility of holding an additional meeting of the Working Group, after the meeting in January 2015, should be considered, as it could not be excluded that a consensus may not be reached at that meeting. In that regard, many delegations stressed that States should strive to reach a consensus and expressed confidence that consensus would indeed be reached, thereby making an additional meeting unnecessary. Some delegations emphasized that consensus was not required prior to the commencement of negotiations. Several delegations also noted that an additional meeting would have budgetary implications, not only at the level of the United Nations, but also for States. Some delegations further observed that an additional meeting might result in a repetition of the views that had already been expressed. A suggestion was made by some delegations that the consideration of a decision on a possible additional meeting would be more appropriate closer to or at the end of the meeting in January 2015. It was also pointed out that any decision to hold an additional meeting would be made by the General Assembly. Several delegations expressed willingness to use bilateral, multilateral or virtual meetings prior to the next meeting of the Working Group to advance the discussions and enable the Working Group to fulfil its mandate.

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Financial reports and audited financial statements, and reports of the Board of Auditors

Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the biennium 2012-2013 and annual financial periods 2012 and 2013

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, pursuant to resolution 47/211, a concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors on its audit of accounts for the financial periods ended 31 December 2012 and 31 December 2013.

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Letters of transmittal

Letter dated 30 June 2014 from the Chair of the Board of Auditors addressed to the President of the General Assembly

I have the honour to transmit to you a concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the biennium 2012-2013 and annual financial periods 2012 and 2013.

(*Signed*) Sir Amyas C. E. **Morse**
Comptroller and Auditor General of the
United Kingdom of Great Britain and Northern Ireland
Chair of the Board of Auditors

Letter dated 30 June 2014 from the Chair of the Board of Auditors addressed to the Secretary-General

I have the honour to transmit to you the concise summary of principal findings, conclusions and recommendations contained in the reports prepared by the Board of Auditors for the General Assembly at its sixty-ninth session.

(*Signed*) Sir Amyas C. E. **Morse**
Comptroller and Auditor General of the
United Kingdom of Great Britain and Northern Ireland
Chair of the Board of Auditors

Abbreviations

ITC	International Trade Centre
IPSAS	International Public Sector Accounting Standards
MICT	International Residual Mechanism for Criminal Tribunals
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund
UN-Habitat	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNU	United Nations University
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women

Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the biennium 2012-2013 and annual financial periods 2012 and 2013

Summary

The General Assembly, in its resolution 47/211, invited the Board of Auditors to report in a consolidated fashion on major deficiencies in programme and financial management and cases of inappropriate or fraudulent use of resources together with the measures taken by the relevant entities. The findings and conclusions included in the present report relate to the common themes and major deficiencies identified in the Board's reports addressed to the General Assembly on 19 entities plus the United Nations peacekeeping operations (see annex I). The Board also draws on its reports on stand-alone topics in the same period. The detailed findings and recommendations related to individual entities are contained in their separate audit reports.

Key points

In summary, the key points drawn out in this report are as follows:

Audit opinions

- The Board of Auditors has audited the financial statements and reviewed the operations of 19 organizations plus the United Nations peacekeeping operations. There were no qualified opinions. Two emphases of matter were reported in 2012, but were resolved in 2013. The Board notes a continuing improvement in the preparation processes related to financial closure and financial statements.

Implementation of the International Public Sector Accounting Standards

- The adoption of IPSAS as at 1 January 2014 across all entities in the Board's portfolio represents a significant achievement. The entities going live in 2014 still face challenges, and the Board will be able to report only in 2015 whether they have successfully delivered IPSAS-compliant financial statements. Initial progress in developing structured benefits realization plans was slow, but there has been noticeable progress in 2013. Implementation of IPSAS is driving an improvement in financial management skills and capacity at all levels.

Enterprise risk management

- The Board, while noting that some entities are at a more advanced stage than others, has previously reported its concern that United Nations entities do not operate an approach to enterprise risk management. While acknowledging that implementing a system of enterprise risk management is a challenging endeavour, progress has been slow. While work is still in progress, the United Nations Management Committee has made significant progress through the identification of six key strategic risks, the development of governance arrangements to manage the risks, and the establishment of department-specific risk registers.

Managing globally dispersed operations

- Many of the entities in the Board's portfolio operate through large field office networks. The Board continues to note problems in striking the right balance between providing sufficient flexibility and authority to the field versus the right level of monitoring, intervention and oversight by Headquarters functions. This is a theme that has emerged again over the biennium, for example, at UNODC, UN-Women, and in peacekeeping operations.

Budgets

- The budget in any organization is a key tool for deciding how resources will be allocated to deliver its strategic objectives. The United Nations uses the regular budget to agree the financial envelope within which the Organization, or each department or business unit, must operate. However: the budget offers limited value as a management tool at a strategic and operational level; it consumes too many resources for the level of change and strategic value it offers the Organization; and it is not built on an accurate understanding of the actual costs of delivery.

Financial management

- A clear classification between administration and programme costs is the basis for effective cost management. Most entities do not currently analyse their total cost base in this way, meaning that it is difficult to establish the proportion of resources being used to deliver frontline activities.
- Adoption of IPSAS and the introduction of enterprise resource planning systems offer a valuable opportunity to produce regular and systematic financial performance information for use by management. All entities have made progress in this regard, and many have plans for continued improvement and refinement of their financial management reporting.
- In most entities the value of end-of-service liabilities continues to increase (particularly after-service health insurance costs), reflecting updated management assumptions on life expectancy, health-care costs and the discount rates used in actuarial valuations. However, only a few entities have developed a plan to fund those liabilities, increasing the risk that escalating costs could have a detrimental impact on the delivery of mandates in the future.

Implementing partners

- Implementing partners are a critical part of the service delivery model of many United Nations organizations. Action has been taken at the entity level to strengthen the management system for working with implementing partners. However, there is work still to be done to establish a more risk-based approach to the selection, monitoring and close-out of projects delivered by implementing partners. For example, there is no requirement to share information on the performance of implementing partners across United Nations entities. This limits the ability of entities to reward good performance with further contracts, to incentivize implementing partners who perform poorly to demonstrate improvement, and to avoid engaging implementing partners suspected of being, or proven to have been, engaged in fraudulent activity.

Awareness of fraud

- Given the scale and complexity of global activity undertaken by many entities and the high-risk environments in which that activity takes place, the level of reported fraud is unlikely to reflect either the level or nature of the fraud risks faced.

- The Board notes that two of three entities examined (the United Nations and UNHCR) lack an integrated strategy to counter fraud and have not assessed their potential exposure to fraud. In the United Nations, in particular, the fragmentation of existing policies, procedures and guidance may deter or delay staff from reporting or addressing fraud.

- Most entities have investigation units, but they are limited in the extent to which they can pursue systematic fraud across organizational boundaries. Coordination of investigative capacity is limited, and the Board therefore encourages the United Nations system to consider the establishment of a system-wide unit to counter fraud that is equipped and trained to tackle fraud on behalf of all entities.

Skills in core business services

- While not material, the Board continues to note continuing issues with non-compliance in important business functions. The issues with compliance are also explained by skills gaps across entities in human resource management, asset management, procurement and contract management, and management of information and communications technology. These are all important business functions that are vital to the cost-effective delivery of the activities of the entities concerned.

Business transformation in the United Nations

- The United Nations is in the midst of a number of major business transformation activities, including the implementation of a new enterprise resource planning system (Umoja) and IPSAS. While recognizing the challenge of simultaneously implementing major business transformations in the complex, highly federated, and diverse environment of the United Nations, the Board has continued to highlight a number of common themes, such as: the need for an agreed and articulated vision for change; a realistic and holistic assessment of the ability of the United Nations to absorb change and deliver its ongoing mandates; more effective governance and accountability, and benefits management; and improved programme and project management.

Status of implementation of recommendations

- The Board considers the full implementation rate of 56 per cent for all 19 entities, 21 months after reporting, to be evidence of strong management commitment, although the percentage is lower compared with 2008-09 (65 per cent). A further 40 per cent of recommendations (28 per cent in 2008-09) were under implementation, leaving 2 per cent on which management made no progress, and 1 per cent which were overtaken by events.

A. Scope and mandate

1. The General Assembly, in its resolution 47/211, invited the Board of Auditors to report in a consolidated fashion on major deficiencies in programme and financial management and cases of inappropriate or fraudulent use of resources together with the measures taken by the relevant entities. The findings and conclusions included in the present report relate to the common themes and major deficiencies identified in the Board's reports in 2012 and 2013 addressed to the General Assembly on 19 entities plus the United Nations peacekeeping operations (annex I).[1] The Board also draws on its reports on stand-alone topics in the same period. The detailed findings and recommendations related to individual entities are contained in their separate audit reports. The contents of the Board's reports to the Security Council and other governing bodies are not included.

2. From 2014 onwards, as agreed by the General Assembly in its resolution 68/19, the Board will issue its concise summary on an annual basis to reflect that all entities in its portfolio will have implemented IPSAS and will be reporting annually.

3. On 27 January 2014, the Chairman of the Advisory Committee on Administrative and Budgetary Questions, in the context of resolution 68/19, requested the Board to continue to provide information in its future reports on cross-entity issues, namely, the need for:

- Enhanced control and monitoring over implementing partners owing to the potential for abuse by third parties' executing activities on behalf of United Nations entities
- Strengthened core business functions, such as procurement, contract management, and financial and budgetary management, through enhanced staff skills
- Enhanced oversight, accountability and governance for globally dispersed operations and the achievement of an optimal balance between decentralized delegated authority and the appropriate level of monitoring and control by the respective Headquarters offices.

4. The Board has continued to report on cross-entity issues within its entity-level reports. It also includes commentary in this summary report on accountability and governance for globally dispersed operations (sect. D), on implementing partners (sect. G), and on staff skills relating to core business functions (sect. I).

B. Audit opinions

5. The Board of Auditors has audited the financial statements and reviewed the operations of 19 organizations plus the United Nations peacekeeping operations (see

[1] To better support the General Assembly in its governance role, the Board includes peacekeeping operations in the present report to provide a more comprehensive picture of major deficiencies identified in its reports. The peacekeeping operations have an annual financial cycle ending 30 June, and therefore the figures related to those operations are as at that date unless otherwise indicated. From 2012, nine entities in the Board's portfolio implemented IPSAS and now prepare financial statements on an annual basis. The present report summarizes the findings for those entities across both 2012 and 2013.

annex I), in accordance with General Assembly resolution 74 (I) of 7 December 1946. The Board has issued short-form reports reflecting its audit opinions together with long-form reports, which contain detailed findings and recommendations arising from each audit (annex II contains a description of the types of audit opinions).

6. The Board issued 30 audit opinions during the biennium 2012-2013 (see table 1). The key points to note are:

- All eight of the entities that implemented IPSAS in 2012 received an unmodified opinion again in 2013.
- All 10 entities that reported on a biennial basis for 2012-2013 under the United Nations system accounting standards received unmodified audit opinions. From 2014 onwards, and on an annual basis, all 10 entities will be reporting under IPSAS.
- Peacekeeping operations reporting under the United Nations system accounting standards had unmodified opinions in both years. The financial statements for peacekeeping operations for the period ended 30 June 2014 will be produced under IPSAS.

7. The Board notes a trend of continuing improvement in the preparation processes related to financial closure and financial statements.

Table 1

Types of audit opinions issued by the Board for the current reporting period compared with previous periods

	2013			*2012*			*2010-2011*		
Organization	*Unmodified opinion*	*Qualified opinion*	*Emphasis of matter or other matter*	*Unmodified opinion*	*Qualified opinion*	*Emphasis of matter or other matter*	*Unmodified opinion*	*Qualified opinion*	*Emphasis of matter or other matter*
United Nations[a]	X				–		X		
Peacekeeping operations[b]	X			X			X		
ITC[a]	X				–		X		
MICT[d]	X				–			–	
UNCDF[d]	X			X				–	
UNDP[c]	X			X			X		
UNEP[a]	X				–		X		
UNFPA[c]	X			X			X		
UN-Habitat[a]	X				–		X		
UNICEF[c]	X			X		X	X		
UNITAR	X				–		X		
UNHCR[c]	X			X			X		
UNJSPF[c]	X			X			X		
UNODC[a]	X				–		X		
UNOPS[c]	X			X			X		
UNRWA[c]	X			X		X	X		X
UNU[a]	X				–		X		
UN-Women[c,d]	X			X				–	
International Criminal Tribunal for Rwanda[a]	X				–		X		
International Tribunal for the Former Yugoslavia[a]	X				–		X		
Total	**20**			**10**	**0**	**2**	**17**	**0**	**1**

[a] Biennial reporting period ended 31 December 2013.

[b] Twelve-month period ended 30 June.

[c] Annual reporting period ended 31 December 2012 and 31 December 2013 following IPSAS implementation.

[d] The first year of accounting for MICT was 2013; the first year of accounting for UN-Women and UNCDF was 2012.

C. Implementation of the International Public Sector Accounting Standards and realization of benefits

8. In accordance with General Assembly resolution 61/233 and in response to the comments of the Advisory Committee on Administrative and Budgetary Questions regarding the adoption of IPSAS (see A/65/782, paras. 18 and 19), the Board has continued to assess the status of implementation of IPSAS within its entity-level reports and also in an overall progress report. The fourth progress report (A/69/155) will be the last such report, as from 2014 all United Nations entities should have implemented IPSAS.

9. The adoption of IPSAS across all entities in the Board's portfolio represents a significant achievement. It demonstrates management's commitment to more complete, transparent, timely and effective financial reporting, and the active management of a challenging transformation programme. The entities going live in 2014, however, still face challenges, and the Board will be able to report only in 2015 on whether they have successfully delivered IPSAS-compliant financial statements.

Realization of benefits from the implementation of the International Public Sector Accounting Standards

10. While the delivery of IPSAS-compliant financial statements will be a noteworthy achievement, the ultimate test of success will be the delivery of the intended benefits. This is why the Board has stressed the need for clear benefits realization plans. While initial progress was slow, there was real progress across a number of entities in 2013 in developing and implementing improvement plans. Benefits are also being seen in financial reporting to senior management (UNHCR, UN-Women, UNICEF and UNRWA) and investment in financial management skills for finance and operational staff (UNDP, UNFPA, UNHCR and UNICEF). The United Nations has developed an approved IPSAS benefits plan which it will use along with the other entities it supports that are going live in 2014. Other entities (UNHCR, UNICEF, UNJSPF, UN-Women, UNDP and UNCDF) have implemented benefits realization plans with clearly defined mechanisms to identify and track benefits. The frameworks now in place will enable tangible benefits to be reported in the next 12 to 18 months.

11. The Board has stressed how new IPSAS-based information should enable improvements in important business functions. The United Nations strategic capital review[2] is cited as one example of how improved asset information, generated to support IPSAS implementation, is enabling the Administration to more effectively analyse and plan its capital maintenance programme across its global property estate.

[2] The strategic capital review seeks to provide an informed understanding of future capital requirements and approaches to asset management (A/68/733).

D. Financial management

Indicators of financial sustainability

12. Where information has been available, the Board has used ratio analysis of assets and liabilities to assess financial sustainability and liquidity across United Nations e ities. In general, a ratio of 1:1 is considered to be a sound indicator of financial sustainability.

13. All seven entities reporting under IPSAS since 2012 can demonstrate their financial sustainability, as they have more than sufficient assets to cover their immediate and longer-term liabilities (see table 2). In addition, six of the seven entities are able to demonstrate their liquidity to meet liabilities, as their cash ratio exceeds 1:1. For UNRWA, the cash ratio is less than 1:1. The Board has confirmed, however, that UNRWA is able to meet its immediate liabilities as they fall due. For UNHCR, the current ratio is sufficiently high to warrant further review of whether operational requirements justify a level of assets which is that far above the level of liabilities. For UN-Women, the liquidity ratios are relatively high because it received significant contributions of $37 million towards the year end, and those were held in cash and investments as at 31 December 2013.

Table 2
Ratio analysis: entities reporting under the International Public Sector Accounting Standards as at 31 December 2013

	UNOPS	*UNHCR*	*UNICEF*	*UNDP*	*UNRWA*	*UN-Women*	*UNFPA*
Current ratio[a]							
Current assets: current liabilities	0.73	8.7	3.2	4.41	2.41	8.9	2.9
Total assets: total liabilities[b]	1.08	3.2	2.1	3.38	1.35	4.7	4.6
Cash ratio[c]							
Cash + short-term investments: current liabilities	1.09	3.5	1.79	3.86	0.42	7.2	4.2
Quick ratio[d]							
Cash + investments + accounts receivable: total liabilities	1.07	2.2	1.44	4.08	0.31	7.6	0.7

Source: Board analysis of financial statements.

[a] A high ratio indicates an entity's ability to pay off its short-term liabilities.

[b] A high ratio is a good indicator of solvency.

[c] The cash ratio is an indicator of an entity's liquidity by measuring the amount of cash; cash equivalents or invested funds there are in current assets to cover current liabilities.

[d] The quick ratio is more conservative than the current ratio because it excludes inventory and other current assets, which are more difficult to turn into cash. A higher ratio means a more liquid current position.

14. The Board has conducted a similar analysis for those entities still reporting under UNSAS (see table 3). Those entities cannot be directly compared with those

in table 1 as they do not fully report their assets and liabilities. However, based on the available information on assets and liabilities, the four entities can demonstrate their financial sustainability and liquidity to meet reported liabilities. Each of the entities has a cash ratio of greater than 1:1, showing their liquidity to meet liabilities that arise in the short term.

Table 3
Financial ratio analysis for entities reporting under the United Nations system accounting standards as at 31 December 2013

	United Nations	*UNODC*	*UN-Habitat*[a]	*ITC*	*UNEP*[b]
Current ratio					
Current assets: current liabilities	2.14	4.8	–	3.44	–
Total assets: total liabilities	1.27	3.6	3.1	0.85	1.96
Cash ratio					
Cash + short-term investments: current liabilities	1.85	3.3	1.69	2.74	–
Quick ratio					
Cash + investments + accounts receivable: total liabilities	0.78	2.5	1.94	0.70	1.59

Source: Board analysis of financial statements.

[a] UNEP and UN-Habitat financial statements do not categorize information in a way that enables a comparative calculation of current ratio.

[b] UNEP financial statements do not categorize information in a way that enables a comparative calculation of cash ratio.

Improving financial management

15. Renewed training and updated documentation of policies and procedures, linked to the implementation of IPSAS across the United Nations, has helped improve financial management skills, capacity and staff understanding at all entities. Entities face challenges in recruiting staff with a thorough knowledge of IPSAS, and need to consider the adequacy of their training and resourcing strategies to maintain the level of accounting expertise required.

16. While there is no evidence yet of a wider initiative to transform and modernize the role of the finance function, there is encouraging evidence of enhanced financial management and ongoing improvement initiatives at all entities following the adoption of IPSAS. Of particular note, UNICEF, UNFPA and UNDP are offering to a significant number of staff an internationally recognized public sector and IPSAS-orientated Finance Training and Certification Programme in partnership with the Chartered Institute of Public Finance and Accountancy. The aim is to further develop knowledge and skills in financial management for staff who work in finance or are engaged in the management and oversight of financial resources. The training programme started for the first cohorts of staff in 2014. This is an initiative that might be considered useful by other entities.

17. In the meantime, where entities have adopted IPSAS there is clear evidence of increased rigour in financial management processes engendered by the Standards. For example:

- UN-Women introduced a range of new financial processes and guidance, shifting responsibility and accountability for financial management functions to country offices, allowing headquarters to play a more effective oversight and quality assurance role. This is transforming the financial management and business processes of UN-Women, improving both management and donor reporting.
- UNFPA has automated the preparation process of its financial statements, which is enabling management to spend more time reviewing, rather than preparing, the financial statements.

Better financial information for management

18. The adoption of IPSAS, and the resultant changes to enterprise resource planning systems, offers a valuable opportunity to produce regular and systematic financial performance information for use by management. All entities have made progress in this regard, and nearly all entities provide some form of enhanced information to management on a monthly and quarterly basis. Many also have clear plans for continued improvement and refinement of their financial management reporting to management, for example, UNHCR, UNRWA and UNICEF.

19. Entities moving to IPSAS in 2014 do not yet systematically produce in-year financial information, although the United Nations has started to provide its Management Committee with quarterly reports on cash and investment holdings, and analysis of key financial performance ratios.

Transparent reporting of administrative and programme costs

20. While there are pockets of good practice, more generally across many entities, neither the financial statements nor the underlying financial reporting data analyse the level of administrative expenditure incurred within the budgets of front-line activities. There is also no way to identify the level of administrative expenditure incurred in the delivery of extrabudgetary activities.

21. United Nations system entities need to have effective cost-management systems to ensure effective delivery of their mandates. The reduction in core funding from Member States, both in absolute terms and as a percentage of total income across entities, and the increasing use of ring-fenced voluntary funding, increases the need to monitor and contain administrative costs.

22. Reliable and complete financial and management information, as well as clear cost classification between administration and programme costs, are the basis for effective cost management. However, most entities do not currently systematically analyse their total cost base between programme and administrative expenditure categories. For example:

- The United Nations allocates its regular budget costs across its activities, including administrative functions, such as common support services and administrative activities; but it cannot clearly identify programmatic costs from administrative costs.

- UNOPS does not have comprehensive information on costs, and it does not always separate elements of programme costs from direct administrative expenses charged to projects, such as office rent, accounting services and other support. Indirect administrative expenses ("management expenses") are monitored, but administrative costs can be treated inconsistently.
- At UNICEF, the level of direct programme support costs varies across country offices and programmes/implementing partners. The variations need to be better understood as they indicate opportunities to improve efficiency across operations.

23. There has been progress among some entities, such as UNODC and UNHCR, to identify more clearly the split between administration and programme costs. More complete cost information, driven by IPSAS and new enterprise resource planning systems, offers the potential for United Nations entities to better understand the costs of their activities. This will be vital as it is likely that fiscal pressures and changes in funding methodologies will continue, increasing the pressure to manage administrative overheads as tightly and transparently as possible. Until entities have better information on administrative and programme costs, they cannot provide assurances to Member States on the efficiency and effectiveness with which they use the financial resources provided to them. This will constitute an area of focus for the Board in future audits.

End-of-service liabilities

24. The Board has continued to review the actuarial valuation of accrued end-of-service and post-retirement liabilities and to monitor progress in management of those liabilities, as summarized in table 4. The increases generally reflect updated management assumptions on life expectancy, health-care costs and the discount rates used in actuarial valuations. While more entities are fully disclosing their end-of-service liabilities, increasing visibility of the general level of growth, only a few entities have developed a funding plan for those liabilities. Without such a plan, entities will face the risk that escalating costs could have a detrimental impact on the delivery of mandates in the future.

Table 4
End-of-service liabilities in the United Nations and its funds and programmes (where comparative data is available)

(Thousands of United States dollars)

	End-of-service liabilities			*Including after-service health insurance of*			*Method of disclosure*			
Organization	*2013*	*2011*	*Increase (percentage)*	*2013*	*2011*	*Increase (percentage)*	*Full*[a]	*Partial*[b]	*Note*[c]	*Lack of funding plan*
United Nations	3 592 254	3 214 813	12	3 223 015	2 916 305	11	x			x
Peacekeeping operations	1 183 133	958 431	23	896 991	768 750	17	x			x
ITC	62 146	60 116	3	55 922	54 839	2	x			x
UNCDF[d]	12 828	–	–	7 899	–	–				
UNDP	954 622	984 687	-3	858 155	826 538	4		x	x	x
UNEP	113 888	102 111	12	84 725	77 216	10	x			x
UNFPA	259 331	195 132	33	209 399	163 289	28	x			

Organization	End-of-service liabilities			Including after-service health insurance of			Method of disclosure			Lack of funding plan
	2013	2011	Increase (percentage)	2013	2011	Increase (percentage)	Full[a]	Partial[b]	Note[c]	
UN-Habitat	24 687	23 292	6	17 805	17 439	2	x			x
UNICEF	922 569	921 563	0	816 022	783 172	4			x	
UNITAR	6 404	4 904	31	4 897	3 720	32	x			
UNHCR	530 053	482 918	10	417 590	350 773	19	x			
UNJSPF	56 319	48 314	17	51 174	44 868	14	x			
UNODC	43 870	42 232	4	29 109	30 178	-4	x			x
UNOPS	66 570	57 027	17	50 427	39 900	26		x	x	
UNRWA[e]	491 717	34 109	1 342	2 727	481	476		x		x
UNU	12 063	9 780	23	8 381	6 684	25	x			
UN-Women	52 605	37 600	40	36 191	27 400	32		x	x	x
International Criminal Tribunal for Rwanda	74 943	86 574	-13	40 895	43 318	-6	x			x
International Tribunal for the Former Yugoslavia	71 703	69 739	3	28 544	26 959	6	x			x
Total	**8 518 877**	**7 333 342**	**16**	**6 831 969**	**6 181 829**	**11**	**13**	**4**	**1**	**11**

[a] Fully presented on the face of the financial statements.
[b] Partially presented on the face of the financial statements.
[c] Not fully presented on the face of the financial statements but fully disclosed in the notes.
[d] UNCDF did not produce financial statements in 2011.
[e] In 2011 UNRWA was reporting under the United Nations system accounting standards; therefore, most end-of-service liabilities were not reported in the financial statements.

E. Governance, accountability and risk management

25. To deliver the objectives of an organization, management needs to establish an effective system of governance and internal control. Anything that threatens the delivery of the objectives needs to be identified and actively managed, which is why an organization-wide approach to risk management is of fundamental importance.

Enterprise risk management

26. Enterprise risk management is a process, led by senior management but involving every member of staff, applied in setting strategy across an organization. It is a systematic process through which risks and opportunities, that affect an organization and its ability to achieve its objectives, are identified, prioritized and managed. Enterprise risk management drives good internal control and organizational responsiveness. Implementing a system of enterprise risk management is a challenging endeavour that requires visible leadership from senior management.

27. The Board, while noting that some entities are at a more advanced stage than others, has previously reported its concern that some United Nations entities do not operate an approach to enterprise risk management. It has recommended that

organizations such as the United Nations, UN-Habitat, UN-Women, UNEP, UNODC, UNOPS and UNHCR implement such a system.

28. UNODC, working closely with the United Nations, has made positive progress in developing a local enterprise risk management approach. It is developing a corporate risk management framework, and risk management is now a regular agenda item for the Management Coordination Committee, which comprises directors and senior managers from across the organization. UNODC is further refining corporate risk registers and is developing its risk reporting arrangements, including risk dashboards.

29. The United Nations Management Committee has also made significant progress by identifying six key strategic risks, governance arrangements to manage the risks, and the establishment of department-specific risk registers. While still a work in progress, the enterprise risks form the basis for the development of a vital strategic management tool that can be easily integrated with the organization's strategic objectives and "business as usual" processes.

30. UNOPS has developed a theoretical framework for a good risk management system, but must now establish clear procedures for implementing enterprise risk management in practice. The Office is currently preparing a revised entity risk management directive and corporate risk registers to help assess and monitor the risks to the achievement of its objectives.

31. Progress in improving the enterprise risk management framework of UNHCR has been disappointing, despite the organization's risk exposure and attempts to establish a risk management approach in response to previous Board recommendations in 2011. The Board considers that this issue has not been given appropriate senior management attention.

Managing globally dispersed operations

32. The United Nations and its funds and programmes have evolved as decentralized organizations. Many operate devolved field networks and rely on third parties to deliver large parts of their mandates, often in some of the most challenging environments in the world. This has over time created a complex network of organizations, reporting lines and relationships, where accountabilities are often unclear.

33. It is vital, in order to deliver important mandates and secure value for money from the use of increasingly scarce public resources, that the United Nations and its funds and programmes operate to the highest standards of modern governance, accountability and transparency.

34. The Board has previously noted problems in striking the right balance in providing sufficient flexibility, responsive and delegated authority to the field versus the right level of monitoring, intervention and oversight by headquarters functions. This is a theme that has emerged again over the biennium, for example, at UNODC and in peacekeeping operations.

35. While not material, the Board continues to note examples of non-compliance (for example, at UNFPA, UNDP and UN-Women) in areas such as payroll, human resources, and procurement. Many of these examples were identified at the field level, which raises questions as to whether: (a) staff have the necessary skills to

perform their role effectively; (b) local management are taking sufficient responsibility for oversight and control; and (c) there is a need for headquarters functions to exert greater control.

36. The difficulties associated with managing globally dispersed operations have also been demonstrated by the significant difficulties faced during the initial implementation of the United Nations enterprise resource planning system. These were caused primarily by the level of divergence of existing processes, both across organizational units and from the modern processes designed and embedded in the new system, and the lack of business readiness to shift to new ways of working.

37. In this context, an enhanced control environment is a sensible way of reducing financial risk and increasing the chance of achieving value for money. The challenge for managers is to revisit and reset the system of governance and accountabilities, removing mismatches between accountability and authority, reducing the overreliance on transactional levels of control, building meaningful and practical risk-based approaches to secure management assurance over the use of public funds in complex delivery chains, creating integrated financial and performance reporting focused on outcomes, and implementing organization-wide structured approaches to risk management.

38. At a more strategic level, administrations need to more systematically document their internal control frameworks to assess fitness for purpose and determine whether they are operating as intended. This is a theme the Board comments on again in its forthcoming report for the biennium 2012-2013 (A/69/5 (Vol. I)).

F. Budgeting

39. In any organization the budget is a key tool for deciding how resources will be allocated to deliver strategic objectives. Budgets should represent an articulation of an organization's priorities and aspirations and communicate management's view on the resources required to achieve them.

40. Most entities are finding the implementation of results-based budgeting challenging due to issues reported previously in linking outcomes to resources, and linking resources to activities and ultimately results. Budgets provide an agreed financial envelope within which an organization and each department or business unit must operate, but offer limited value as a management tool at a strategic and operational level if they are not built on an accurate understanding of the actual costs of delivery. For example:

- At UNICEF, the Board found insufficient justification for budgets with regard to advocacy and inter-country programmes. In addition, some budgets were not presented in a consolidated manner, limiting the governing body from obtaining an overall picture of the goals to be achieved or the financial resources required.
- At the United Nations, the budget follows an incremental "bottom up" approach that reinforces existing structures and systems by budgeting based on what things actually did cost, not what they could cost. The United Nations regular budget formulation process is also lengthy (16 months to approve) and

consumes a significant amount of time and effort, with little change biennium to biennium.

- At UNRWA, although field and headquarters implementation plans articulate the financial resources required for implementation of each objective, some objectives had not been allocated the financial resources required.
- In peacekeeping operations, while noting some improvements, the Board has identified: inconsistent and unrealistic budgeting methodologies; inconsistent application of key budget assumptions; and inadequate consideration of historical trends underpinning key assumptions. The Board also noted opportunities to improve the budget review process and the management of budget redeployments at both mission and Headquarters levels.

41. In addition to the integral part the budget plays in financial management and control, the Board also believes there is scope for administrations to increase the strategic value of the budget as a tool for management by:

- Establishing integrated performance and financial reporting, to improve accountability and transparency and the ability of organizations to demonstrate they are using resources cost effectively.
- Using the budget process as the means to embed new ways of working. For example, by reducing or increasing the level of budget for the entire organization, parts of the organization, or categories of expenditure (such as information and communications technology, estates or staff costs).
- Using the budget process to facilitate and incentivize cross-departmental working to reduce administrative or back-office support costs and reallocate resources into front-line activities.

G. Implementing partners

42. Implementing partners are a critical part of the service delivery model of many United Nations system entities. Implementing partners vary widely in terms of their size and role, ranging from: host Governments to other United Nations entities, and from large-scale multinational to smaller local non-governmental organizations. The types of projects and programmes delivered by implementing partners also vary in size, duration and cost.

43. The Board has raised concerns previously regarding the management of implementing partners and has continued its coverage of this important area. The Board's concerns are shared by the Joint Inspection Unit[3] and by a number of internal audit and oversight services. Although data on the funds allocated to implementing partners is incomplete, and definitions vary, the Board estimates there is at least $10 billion of expenditure via implementing partners. For some organizations a significant and growing proportion of their overall expenditure is via implementing partners. For example, in UNICEF this figure stands at 32 per cent of total expenditure, and for UNHCR, it is 40 per cent.

[3] See review of the management of implementing partners in United Nations system organizations (JIU/REP/2013/4).

44. A core principle of accountability is that when management passes funds to another organization, regardless of the type of partner, it should operate an effective governance regime to gain assurance that: the funds have been used for the purposes intended; the risk of fraud and error has been minimized; and that funds have delivered the desired outcomes cost effectively. Effective governance needs to be objectively demonstrated to donors to provide confidence that funding is being used appropriately and to good effect.

Progress in establishing more consistent ways of working

45. The Board concurs with the assessment of the Joint Inspection Unit that a large number of United Nations organizations lack a strategic framework on partnerships and have ad hoc and incoherent approaches in engaging with implementing partners. There are, however, emerging efforts among individual organizations to develop the institutional frameworks, policies, procedures, and guidelines, for the management of implementing partners.

46. This biennium has seen progress made by some United Nations entities in how they select, monitor and close out projects delivered through implementing partners. For example, UNICEF, UNHCR, the Office for the Coordination of Humanitarian Affairs, UNODC and UN-Women have developed, or are developing, guidance to ensure a more consistent approach across a globally dispersed network of country offices. Work still needs to be done in all entities, and to varying extents, to embed these approaches as part of a functioning management system, and to equip staff with skills in areas such as project assurance and monitoring, commercial and contracting, financial and data analysis, and operations management. While there is some evidence of sharing of best practice, the Board considers that more could be done to harmonize and coordinate control activities across different entities, especially where they are operating in the same environments and with the same implementing partners.

Harmonized approach to cash transfers

47. To reduce transaction costs for implementing partners and to strengthen financial management capacity, the United Nations Development Group, composed of UNDP, UNFPA, UNICEF and UNOPS, introduced the harmonized approach to cash transfers (HACT) in 2005. In November 2012, the group received an unsatisfactory joint audit review,[4] which concluded that internal controls and governance arrangements had either not been established or were not functioning well.

48. In its previous summary report, noting deficiencies in HACT in its entity-specific reports, the Board highlighted the need for the following three actions: a review of the HACT framework; a review of the entity-specific architecture to support HACT; and consistency and assurance regarding funds transferred to implementing partners.

49. In the biennium 2012-2013, the Development Group reviewed the HACT framework. It has started revising the framework and is developing a global strategy

[4] The audit was conducted by the Office of Internal Audit and Investigations of the United Nations Children's Fund (UNICEF), the Division for Oversight Services of UNFPA as lead auditor and the Office of Audit and Investigations of UNDP.

to strengthen its implementation and management. The Board continues to note problems with the implementation of HACT at the country level in UNICEF and UNFPA, and cautions against any expectation that the revised framework will be any easier to implement in practice.

Use of information

50. Good information is vital to management in making the right decision when approving a project and in selecting the partner to deliver it. At the Office for the Coordination of Humanitarian Affairs, UNHCR and UNICEF, information available to management did not consistently inform the selection process. More widely, United Nations entities often operate in the same regions, with many using the same third parties, but there is no formal requirement or mechanism for them to share information on prior performance by partners. While recognizing there can be some sensitivity with regard to the performance of host nation implementing partners, in the Board's view, not sharing information limits the ability of United Nations entities to reward good performance with more contracts, and incentivize those implementing partners who perform poorly to demonstrate improvement. It also increases the risk of entering into arrangements with partners suspected of or engaged in fraud.

Tackling fraud in relation to implementing partners

51. Of note in this biennium is the action taken by the Office for the Coordination of Humanitarian Affairs in response to concerns raised previously by the Board, and a series of suspected frauds in the Somalia Common Humanitarian Fund (reported on in the Board of Auditors report A/69/5 (Vol. I)). The Office has developed a risk-based approach to managing implementing partners, including vetting a partner's risk level, with high-risk partners less likely to be given projects. If approved, projects or partners deemed to be higher risk are subject to more intensive monitoring arrangements.

52. The fraud cases have arisen in funds managed by the Office for the Coordination of Humanitarian Affairs as part of a multi-agency pooled funds arrangement in Somalia. The cases involve the delivery of humanitarian projects by non-governmental organizations. The cases were identified through a combination of: (a) analysis by an innovative Risk Management Unit established to support 24 United Nations entities providing support and implementing programmes in Somalia, through improved risk assessments and improved decision-making; and (b) proactive investigation of known risks by the Office of Internal Support Services. The frauds identified affect not only the Office for the Coordination of Humanitarian Affairs, but also potentially other United Nations entities and donors, illustrating the cross-organizational boundary nature of the threats that determined fraudsters can pose. As the Board highlights, there is an urgent need to assess risks in other high-risk countries, and notes the establishment of a Risk Management Unit in Afghanistan.

53. The Board notes that at both the United Nations and UNHCR there is limited sharing of information on implementing partners, many of which contract with multiple United Nations entities. At least one of the implementing partners under investigation in relation to fraud against the Office for the Coordination of

Humanitarian Affairs in Somalia had been previously identified by another United Nations entity of suspected misappropriation of funds.

54. UNDP reported a number of cases of fraud and presumptive fraud to the Board, including one case involving suspected irregularities in National Implementation Modality procurement procedures affecting four projects in one country in Latin America. The details of the case are still under investigation by national authorities, and the Board will continue to monitor developments in close consultation with UNDP. As the projects are funded almost entirely from contributions by the national government, no significant losses are expected to be incurred by UNDP.

Lessons for administrations

55. The Board acknowledges the action taken at the entity level to strengthen the management system for working with implementing partners, while noting that there is still more to be done. The main lesson is that United Nations organizations should seek to exploit opportunities to work collectively and collaboratively to improve the cost-effective delivery of vital services to beneficiaries, for example, by:

- Establishing a risk-based approach to the management of implementing partners;
- Sharing information on implementing partner performance and using this as part of project selection;
- Sharing and even consolidating guidance across entities to manage what are essentially the same business processes and procedures, even if the projects vary greatly;
- Acknowledging the risk of fraud and collectively establishing an environment where the United Nations and its funds and programmes are a difficult prospect to defraud.

H. Awareness of fraud

56. Many United Nations entities operate in high-risk environments and are exposed to a wide range of different fraud risks, both internal and external. The frauds may be opportunistic attempts by individuals or systematic, well organized and premeditated. As well as diverting public money away from vital services, fraud can undermine the confidence of those who support and fund an organization. As such, fraud should be considered a key business risk. During 2012-2013 the Board has started to examine the robustness of entities' anti-fraud approaches, reviewing UNHCR, UNOPS and the United Nations.

Anti-fraud policies and strategy

57. All public organizations have a responsibility to develop anti-fraud policies and strategies, to show those seeking to defraud them that such action is unacceptable and will not be tolerated. Of the entities examined to date, only UNOPS has established an integrated counter-fraud strategy focusing on all types of fraud (both internal and external).

58. In its report on reporting cases of fraud or presumptive fraud in financial statements (2014/051), the Office of Internal Oversight Services has also raised concerns about the fragmentation of existing policies, procedures and guidance on fraud across the United Nations, which is consistent with the Board's assessment of the United Nations anti-fraud policies and guidance.

Fraud risk assessments

59. While it is impossible to detect all fraud, assessing the potential risks, scale of loss and exposure to fraud is an important first step in understanding if an organization has a problem. It enables an appropriate and proportionate response to be developed and helps determine the relative priority that should be given to tackling fraud.

60. Aside from the relatively recent work of the risk management units established in high-risk country operations, such as Somalia and Afghanistan, there is no evidence that United Nations system entities have thought through how to obtain a better understanding of the overall fraud threat they face. For example, the United Nations, UNHCR and UNOPS have not conducted a thorough assessment of their fraud risks. Without undertaking such an assessment, those organizations cannot understand the effectiveness of existing control measures, mitigate any problems, define their tolerance to different types of fraud risk or ensure that anti-fraud controls are proportionate.

Fraud reporting

61. The United Nations, UNHCR and UNOPS, in common with almost all other entities, have in recent years reported low levels of fraud compared with expenditure. Given the scale and complexity of global activity undertaken by those organizations, and the high-risk environments in which that activity takes place, the level of reported fraud is unlikely to reflect either the level or nature of the fraud risks faced.

62. For example, in the case of the United Nations, a total of 69 fraud cases with a value of $13.3 million have been reported to the Board over the last 10 years. This is equivalent to just over 0.03 per cent of expenditure over the same period. There is also a tendency for only minor internal frauds by staff members to be identified, due to the lack of guidance or understanding of the risk of external fraud. The full fraud exposure of United Nations operations globally is not yet understood, and is likely to exceed the cases being reported.

Investigation capacity and capability

63. During the biennium, seven cases of fraud emerged in relation to projects delivered by non-governmental organizations funded from the Common Humanitarian Fund Somalia. The fund is managed by the Office for the Coordination of Humanitarian Affairs, but involves multiple United Nations entities. In response, the Office has improved its selection and monitoring process in its Somalia operations by, for example, undertaking risk assessments of all implementing partners and developing a database that informs assessment of the inherent risk of a proposal due to project type, location and the implementing partner involved. The controls are still to be fully embedded in Somalia but are a positive step.

64. A review by the Joint Inspection Unit of the investigations function in the United Nations system (see A/67/140 and Add.1) identified that the absence of a single point of contact for reporting fraud cases across the United Nations system means that intelligence is not shared and allegations are not consistently evaluated. In addition, no authority is tasked with monitoring and following up investigation reports to see if action is taken and, if so, whether the action is proportionate. The Joint Inspection Unit concluded that a focal point should be tasked with this responsibility for the Organization as a whole.

65. The Board largely concurs with this view but also recognizes the many constraints under which the investigation units of different United Nations system entities operate; in terms of their remits and ability to share information and tackle frauds that have an impact on more than one entity, and in terms of their skills and capacity to analyse fraud risks and investigate more complex and systematic fraud cases. And that in some cases information sharing and referrals do occur.

66. The Board considers there may be a need for the investigation of serious fraud against the United Nations by external organizations to be consolidated or coordinated. Efforts to pursue fraud being committed by external parties are less effective when numerous agencies or investigative bodies are involved in pursuing suspected fraud by the same external party, as demonstrated by the Somalia example. In addition, sending numerous investigative teams into the same high-risk environment endangers the lives of the investigators themselves, and increasingly reduces the likelihood that subsequent investigations will find valuable evidence. Some United Nations system investigative bodies do not have the mandate or the skills to pursue fraud by external parties.

67. Investigative efforts, across a complex system of separate organizations, as is being seen in other international and national environments, need to be consolidated to be effective, and ideally carried out by one specialist unit appropriately equipped and trained to do the work on behalf of all organizations involved. Such units typically establish commonly applied sanctions and cross-debarment procedures so that when credible fraud by external parties is detected by one entity, other entities do not continue to do business with or disburse funding through that external party.

68. **The Board therefore suggests that the United Nation's System Chief Executives Board for Coordination consider the need for a United Nations system counter-fraud unit. Such a unit could assess fraud risks across the system using modern analytical techniques such as data matching, and have the ability (remit and skills) to take on deterrence, detection and investigation of more serious and systematic fraud risks working across organizational boundaries.**

Sanctions and deterrence

69. The entities examined have rarely pursued legal remedies in response to fraud. While there have been some high-profile legal prosecutions in the past, the majority of staff and external parties who commit fraud against the organizations are not typically pursued through the courts. There is no clear policy on when such action should be contemplated, nor is there evidence that legal action is considered as a matter of course, sending a strong message to potential fraudsters.

I. Cost-effective management of core business services

70. Like all organizations, United Nations entities are seeking skilled and professional staff in a highly competitive environment and so continuous improvement of human resources management is a given. However, the Board continues to highlight numerous and various deficiencies across entities in human resources management, asset management, procurement and contract management, and management of information and communications technology. These are all important business functions that are vital to the cost-effective delivery of the activities of the entities concerned.

Human resources management

71. To deliver their commitments and meet evolving operational needs effectively, organizations require a workforce that is dynamic, adaptable and mobile.

72. While in peacekeeping operations, vacancy rates and the average recruitment time had been reduced in response to concerns previously raised by the Board, across the wider United Nations, other consistent themes during the biennium were vacancy rates and the length of time taken to recruit staff and fill vacant posts. Target times for recruitment were found to be exceeded regularly at the United Nations, UNFPA and UNJSPF.

73. Other common themes related to the use of contractor services. For example, the Board's reports on UN-Women, UNFPA, UNICEF and UNDP identified the use of contractors to perform core staff functions (operations support, administration and finance assistant) or for roles intended for people with United Nations staff status. At UNICEF, commitments for consultants and individual contractors often remained open past contract expiration, which could have a negative impact on the use of available funds.

74. During the biennium, the General Assembly approved the United Nations proposals on mobility. This is an important development that will affect many entities, but only one step towards addressing systemic issues in the management of the United Nations workforce. For example, at the United Nations, the Board identified that few staff are categorized as failing to meet performance expectations and that there was limited evidence of action being taken to identify and address poor performance. The Board also found that some staff had not received an annual appraisal, an issue that has also been identified at UNJSPF and in peacekeeping operations.

75. Workforce planning provides management with a way to align the workforce with the business plan, anticipate change and address current and future workforce issues. However, the Board found that workforce planning at the United Nations does not reflect organizational needs or priorities because it is undertaken after the General Assembly has approved the budgeted posts. This means staff numbers do not reflect the Organization's strategies and missions, or anticipate future trends and workforce demands within departments. Similarly, the Board's report on peacekeeping operations also concluded that deployment of civilian staff was not sufficiently linked to delivery of a mission's mandate and operational requirements.

76. Organizations should provide opportunities for staff to learn and develop skills as their career progresses and organizational priorities change; but the Board found

that the United Nations lacks a centralized skill strategy and that there is no formal mechanism in place to coordinate learning and career development within and between departments. Related concerns were also identified through the Board's work at UNRWA, where staff involvement in defining training needs was limited, making it difficult to identify skills gaps that were impeding effective staff performance.

Asset management

77. The Board has noted continued problems in asset management with, for example, uncertainty over asset and inventory valuations, and high levels of unused assets. The Board notes the level of improving information on assets, and the increasing evidence this information is being used to improve operational performance, but also the continuing need for enhanced skills in asset management.

78. IPSAS has enabled significant values of inventory assets, which were unlikely to be collected or used to be impaired. The Board has also highlighted early benefits in its entity-level reports, for example, improved management of inventory and property, plant and equipment at UNHCR, and improved management of inventory in transit at UNFPA.

79. During 2012 and 2013, the Department of Field Support of the United Nations Secretariat continued to strengthen its management of property, with improvement apparent in several important areas, including physical verification rates for non-expendable property. However, some deficiencies in asset management remain, for example, assets unused on a long-term basis, and delay of disposal processes. The Board also identified the need to improve visibility of the levels of usable inventory and the information on usable inventory to better understand the demand for line items and to improve the accuracy and timing of acquisitions.

80. The Board also noted deficiencies in asset management at UNITAR. For example, 28 per cent of total non-expendable property in UNITAR headquarters was not found during the physical inventory, and investigations had not been conducted robustly. There were also cases of misclassification of non-expendable property. Deficiencies in the classification of inventory items were also identified at UNRWA.

Procurement and contract management

81. United Nations entities contract for goods and services because they have identified them as necessary for the successful delivery of their objectives. If procurement is not carried out in a fair and transparent manner, and/or the contracted goods and services are not delivered on time and according to specification, then not only is the value of the procurement compromised, but also the delivery of the related operational objectives may be delayed.

82. The Board has seen non-compliance in procurement activities, weaknesses in acquisition planning, high use of competition waivers, poor contract management, and a general lack of procurement and commercial expertise. For example:

- Inadequate procurement planning at UNRWA, the International Criminal Tribunal for Rwanda and UNU resulted in the inability to identify and achieve economies of scale through the consolidation of similar items into one contract/tender.

- In peacekeeping operations, a relatively high proportion of commodities was being purchased through system contracts (77.7 per cent in 2012), but there was no evidence of a central procurement strategy designed to maximize opportunities from consolidated procurement. Such opportunities were still identified largely at the mission level.
- High levels of use of competition waivers (UNRWA, UNU, peacekeeping operations), often resulted in the shortening of the tender period. Short tender submission timeframes lead to low vendor response rates due to there being insufficient time for bidders to prepare properly for the tender process and meet the delivery schedule. This limits the scope of competition among vendors, potentially reducing value for money and increasing the risk of fraud and corruption.
- There was insufficient utilization of vendor performance evaluation reports (peacekeeping operations) and deficiencies in supplier assessments at country offices (UNFPA).
- Procurement activities related to approval of contract variations were not complied with (UNRWA).
- The number of procurement staff with the required skills was insufficient, which resulted in the delegation of procurement functions to unskilled staff (UN-Women).

83. UNHCR is making progress in improving management of its supply chain, which is critical to its ability to operate effectively. There is further work to do to respond to all of the issues raised in the Board's previous examinations of procurement and vehicle fleet management.

84. UNOPS is improving how it manages procurement activity (both "transactional" procurement and within projects), but needs to do more to place price competitiveness and value added at the core of its strategy if it is to expand its procurement business. UNOPS must generate more complete information to demonstrate that it provides value for money. For example, it lacks sufficient key data to benchmark its results in terms of price and quality of service, compared with other United Nations entities.

85. Overall, the Board's findings point to the need for: enhanced skills in procurement and enhanced commercial skills to extract maximum value from commercial relationships; more complete information on procurement performance; and management of the supply chain in an integrated way that encompasses procurement, logistics and inventory.

Information and communications technology

86. During the biennium, the Board identified deficiencies in the control environment surrounding information and communications technology (ICT). For example, in UN-Women, a number of dormant user accounts had not been closed; delays in deactivating inactive users can increase the risk of unauthorized transactions which might affect the integrity of financial data and increase the risk of cyberattacks. Concerns about the adequacy of controls over user roles and user access control were also identified in UNDP and the International Criminal Tribunal

for Rwanda. The Board has also periodically noted similar deficiencies in peacekeeping missions.

87. In December 2012, the Board issued a report on the handling of information and communications technology affairs in the Secretariat (A/67/651). The Board found that the approach of the United Nations to delivering its ICT strategy had been unsuccessful, and it raised a number of concerns about the security of the Organization's information environment. The United Nations expects to issue a new ICT strategy for the Secretariat in September 2014 and has taken steps to improve its ICT security environment. The Board will undertake a review of progress made at a point when a revised ICT strategy has been approved and had time to embed.

J. Business transformation in the United Nations

88. Like many international organizations, the United Nations needs to find more cost-effective ways of delivering its activities to enable it to free up resources for redeployment towards the priorities of Member States. It is in the midst of a number of major business transformation activities, and the Board continues to report separately on three of the major projects: the capital master plan; the new enterprise resource planning system (Umoja); and the implementation of IPSAS. The Board has also reported on the implementation of the global field support strategy in its recent reports on peacekeeping operations.

89. In particular, the new enterprise resource planning system is at a critical juncture. In its most recent report (A/69/158), the Board highlights the significant achievement of the roll-out of the foundation phase in peacekeeping operations and special political missions, but also the vital need for lessons to be drawn from the significantly greater challenges than expected that have arisen in post-deployment, in particular: the need for greater focus on business readiness activities and the accountability of the heads of business units therefor; and the need for more achievable plans (budgets, timelines) that include sufficient contingency for risks and uncertainty.

90. Recognizing the immense challenge of simultaneously implementing major business transformations in the complex, highly federated and diverse environment of the United Nations, the Board has continued to highlight to senior management a number of common themes, such as: the need for an agreed and articulated vision for change; a realistic and holistic assessment of the ability of the United Nations to absorb change and deliver its ongoing mandates; and the need for more effective governance and accountability, benefits management, and improved programme and project management.

91. In its report (A/69/5 (Vol. I)), the Board has observed positive steps to improve the Management Committee's overall focus on business transformation including: improved progress reporting; improved senior management decision-making processes; and the identification of business transformation as a main enterprise level risk. At the project level, while recognizing that each project is dealing with a legacy of past decisions to varying degrees and that there are ongoing risks and significant challenges, the Board has seen a positive response to previous recommendations and evidence of good progress since its last report.

92. In terms of the overall management of transformation in the United Nations, the Board would highlight the following points that need to be addressed going forward:

- In terms of project management capacity, we see a strong focus (and a lot of skill and energy) on the technical delivery of projects, but less focus on the realization of benefits.
- In the light of previous problems, the Board considers that there is a good case for establishing an integrated and standing approach to independent project assurance. This should apply from the outset to ensure that projects make the best possible start, providing detailed and expert assurance to senior management to assist their oversight, but also on an ongoing basis at key stages through project life cycles. Otherwise the same problems and issues will keep recurring.
- At a broader level, there is evidence of a more strategic and collective grip by senior management on the direction and delivery of the strands comprising the overall transformation programme. But there also remain a lot of silos in the transformation programme, where improved strategic management and coordination is required to integrate the strands of transformation activity and adapt the approach over time.
- Embedding and sustaining the benefits that the various transformations potentially offer will require deep expertise in managing complex activities and organizational change, as well as very skilful and integrated management of ICT, commercial, human resources and estates.
- The governance, management and accountability structure of the United Nations needs to promote transformation and embed new ways of working. While the Board sees improvements, in particular on the new enterprise resource planning system which is forcing management to work together across the Organization, it remains unclear whether senior management is able to sufficiently mandate cooperation with centrally driven programmes or to direct effective cooperation among subsidiary and related entities.
- At an operational level, the development of an organizational approach to continuously improving business processes would help to ensure that the various transformation initiatives are channelled by staff "on the front line", who understand the operational difficulties they face, into coherent and consistent ways of working.

93. The Board continues to see a need for more clarity on the target operating model the transformation projects, in particular the new enterprise resource planning system, are meant to facilitate and support, to help foster buy-in from staff and Member States. It should articulate, at least at a high level, the optimal organizational structure including: what work is performed where, by whom, using which defined processes, agreed policies and business rules. This is a challenging issue, but progress here will support enterprise resource planning system implementation as well as other enterprise-wide activities, such as the new ICT strategy. It will also strengthen the Organization's ability to secure benefits, reduce the risk of expensive retrofitting post-implementation, and enhance accountability for delivery.

94. UNDP is planning a major transformation of its operations, which will involve relocation of functions and staff to different work stations and regions. The aims of the restructuring include improvement of institutional effectiveness to meet the objectives of strategic plans, to promote better integration, both functionally and geographically, through strengthening the regional presence of UNDP, consolidation of the policy functions, and rationalization of management support and improvement of management-staff ratios. The Board will consider the need to comment in its future reports on the management of results and lessons from this important initiative.

K. Status of implementation of previous recommendations

95. The Board sets out in each of its reports the status of implementation of recommendations for the previous financial period, categorized as recommendations that are: (a) implemented; (b) under implementation; (c) not implemented; or (d) overtaken by events. A summary of the overall position for the 19 entities included in this report is contained in annex III.

96. From 2015, following the full implementation of IPSAS, the Board will report on all entities on an annual basis. The present report is being produced during a transitional year, with 10 entities[5] reporting on an annual basis, and nine[6] reporting on a biennial basis. This makes a like-for-like comparison of implementation rates problematic because of the following differences:

- For the nine entities reporting biennially, recommendations made by the Board in its reports for the biennium 2010-2011 reflect the status of implementation as at 31 March 2014.
- For the 10 entities reporting annually, recommendations made by the Board in its reports for the year 2010-2011 reflect the status of implementation as at 31 March 2013.

Overall status of implementation of recommendations

97. The Board's aim is to provide clear, objective, evidence-based and actionable recommendations that add value to management and operations. The figure shows the overall status of implementation as at 31 March 2014[7] for recommendations made in the biennium 2010-2011 and the comparative result for 2008-2009. The overall proportion of fully implemented recommendations for the 19 entities was 56 per cent for 2010-11 (2008-09: 65 per cent). A further 40 per cent of recommendations (28 per cent: 2008-09) were under implementation, leaving 2 per cent on which management made no progress, and 1 per cent that were overtaken by events. Further details are provided in annex III.

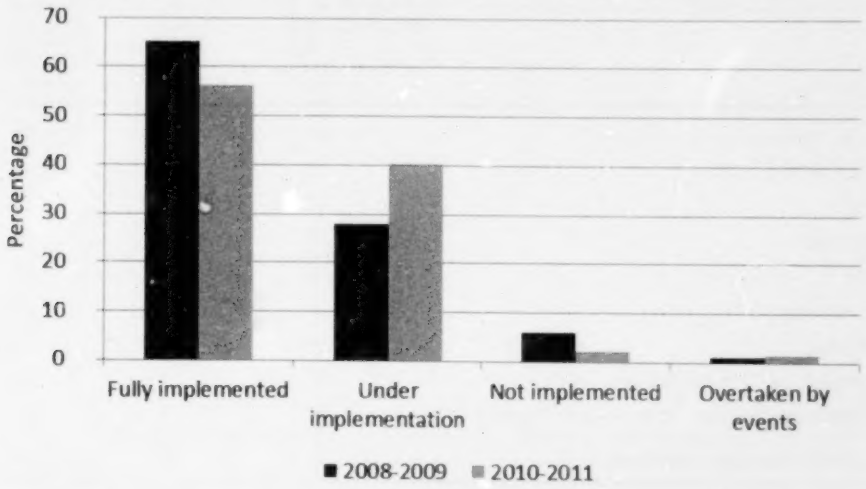
[5] Peacekeeping operations, UNICEF, UNDP, UNRWA, UNFPA, UNJSPF, UNOPS, UNHCR, UN-Women, UNCDF.

[6] United Nations, ITC, UNU, UNITAR, UNEP, UN-Habitat, UNODC, International Criminal Tribunal for Rwanda, International Tribunal for the Former Yugoslavia.

[7] 31 March 2013 for the 10 entities that report annually.

Figure

Comparison of the overall status of implementation of recommendations between bienniums 2010-2011 and 2008-2009



Source: Board of Auditors.
Note: Status as at 31 March 2014.

98. The Board considers the full implementation rate of 56 per cent for all 19 entities, 21 months after reporting, to be evidence of strong management commitment. This is also confirmed through our ongoing engagement with client entities. Furthermore, there has been a significant increase in the percentage rate of full implementation in the nine organizations over time.

99. Table 5 illustrates that for the nine entities that report on a biennial basis only, on average 62 per cent of recommendations were fully implemented 21 months after first being made. This is an increase over the implementation rate of 59 per cent for recommendations made in 2008-2009 at the same point (21 months later). For example, of the 32 recommendations made to the United Nations in the 2010-2011 biennium, the 41 per cent implementation rate reported at 31 March 2013 (nine months after the recommendation was made) has since increased to 63 per cent one year later.

Table 5
Analysis of the rate of implementation of recommendations made for the biennium 2010-2011 over time (per cent)[a]

Organization	*After nine months As at 31 March 2013 (A/68/163)*	*After 21 months As at 31 March 2014 (A/69/178)*	*2008-2009 recommendations after 21 months (for comparison)*
United Nations Secretariat	41	63	60
ITC/UNCTAD/WTO	15	55	33
UNU	25	63	53
UNITAR[b]	33	0	60
UNEP	44	92	62
UN-Habitat	56	56	55
UNODC	39	54	33
International Criminal Tribunal for Rwanda	70	90	86
International Tribunal for the Former Yugoslavia	67	83	90
Average implementation rate	**43**	**62**	**59**

Source: Board analysis of 2010-11 recommendations.

[a] The table includes only the nine entities that produce financial statements on a biennial basis to enable a like-for-like comparison.

[b] One of three recommendations (33 per cent) made to UNITAR was judged implemented at the interim audit stage in March 2013. At final audit, this recommendation was found not to have been fully implemented and status was changed to "under implementation".

Emerging cross-cutting themes

100. The Board has consistently maintained that because its recommendations cover a wide range of topics, reflect differing assessments of risk and differing extents and intensity of coverage at different entities across time, that an analysis of numerical trends is misleading. Conscious of the interest of the Fifth Committee in the scope for further insights in this regard, the Board performed a high-level analysis to identify any emerging cross-cutting themes in its report dated 18 July 2013 on the status of implementation of its recommendations relating to the biennium 2010-2011 (A/68/163). The analysis focused on the same set of recommendations as the present report (biennium 2010-2011), but covered only the nine entities that report on a biennial basis. The Board has reperformed this analysis across the areas of recommendation in all 19 entities covered in the present report, and found that the key themes remain valid and are commented on in the relevant parts of the present report:

- The need to improve governance, accountability and internal control (sect. E);
- The need for enhanced skills in important functions (sect. I);
- The need for integrated supply management (sect. I);
- The need for enhanced programme and project management (sect. J);
- The need for enhanced financial management (sect. D);
- Managing implementing partners (sect. G).

L. Acknowledgement

101. The Board wishes to express its appreciation for the cooperation and assistance extended to it and its staff by the United Nations Secretariat and the funds and programmes.

(*Signed*) Sir Amyas C. E. **Morse**
Comptroller and Auditor General of the
United Kingdom of Great Britain and Northern Ireland
Chair of the Board of Auditors
(Lead Auditor)

(*Signed*) **Liu** Jiayi
Auditor General of China

(*Signed*) Ludovick S. L. **Utouh**
Controller and Auditor General
of the United Republic of Tanzania

Annex I

Organizations or topics audited

Organization	*Lead auditor*
United Nations (A/69/5 (Vol. I))	United Kingdom
United Nations peacekeeping operations (A/68/5 (Vol. II))	China
United Nations new enterprise resource planning system (Umoja) (A/69/158)	United Kingdom
Capital Master Plan (A/69/5 (Vol. V))	United Kingdom
Progress on implementation of IPSAS (A/69/155)	United Kingdom
ITC (A/69/5 (Vol. III))	United Kingdom
UNU (A/69/5 (Vol. IV))	China
UNDP (A/69/5/Add.1)	United Republic of Tanzania
UNCDF (A/69/5/Add.2)	United Republic of Tanzania
UNICEF (A/69/5/Add.3)	China
UNRWA (A/69/5/Add.4)	United Republic of Tanzania
UNITAR (A/69/5/Add.5)	China
UNEP (A/69/5/Add.7)	United Republic of Tanzania
UNFPA (A/69/5/Add.8)	United Republic of Tanzania
UN-Habitat (A/69/5/Add.9)	United Republic of Tanzania
UNODC (A/69/5/Add.10)	United Kingdom
UNOPS (A/69/5/Add.11)	United Kingdom
International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (A/69/5/Add.13)	United Republic of Tanzania
International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (A/69/5/Add.14)	United Republic of Tanzania
The International Residual Mechanism for Criminal Tribunals (MICT) (A/69/5/Add.15)	United Republic of Tanzania
UN-Women (A/69/5/Add.12)	United Republic of Tanzania
UNJSPF (A/69/9, annex __)	China
Voluntary funds administered by the United Nations High Commissioner for Refugees (A/69/5/Add.6)	United Kingdom

Annex II

Explanation of types of audit opinions

Unmodified	*Modified*		
	Qualified	*Adverse*	*Disclaimer*
An unmodified opinion implies that the financial statements of the auditee are prepared, in all material respects, in accordance with the applicable financial reporting framework, i.e., the United Nations System Accounting Standards in the case of the United Nations and its funds and programmes.	A qualified opinion implies that the auditor, who having obtained sufficient and appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material, but not pervasive, to the financial statements, or that the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.	An adverse opinion implies that misstatements, individually or in the aggregate, are both material and pervasive to the financial statements based on sufficient appropriate audit evidence.	A disclaimer of opinion is issued when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion and concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive. A disclaimer of opinion shall also be issued when, in extremely rare circumstances involving multiple uncertainties, the auditor concludes that, notwithstanding his or her having obtained sufficient appropriate audit evidence regarding each of the individual uncertainties, it is not possible to form an opinion on the financial statements owing to the potential interaction of the uncertainties and their possible cumulative effect on the financial statements.

Note: "Emphasis of matter" is to draw users' attention to a matter presented or disclosed in the financial report that, in the auditor's judgement, is of such importance that it is fundamental to users' understanding of the financial report.

"Other matter" is to draw attention to any other matter that is relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.

Annex III

Status of implementation of the recommendations of the Board of Auditors for the biennium 2010-2011 as at 31 March 2014

Organization	*Number of recommendations*	*Fully implemented*	*Under implementation*	*Not implemented*	*Overtaken by events*
United Nations	32	20	11	0	1
Peacekeeping operations[a]	38	18	20	0	0
ITC	20	11	7	1	1
UNCDF[b]	28	23	5	0	0
UNDP[b]	33	8	25	0	0
UNEP	24	22	2	0	0
UNFPA[b]	33	10	19	3	1
UN-Habitat	16	9	4	2	1
UNICEF[b]	26	18	7	0	1
UNITAR	3	0	1	1	1
UNHCR[b]	52	12	38	2	0
UNJSPF[b]	28	20	8	0	0
UNODC	26	14	11	1	0
UNOPS[b]	20	7	13	0	0
UNRWA[b]	36	29	7	0	0
UNU	8	5	3	0	0
UN-Women[b]	28	23	5	0	0
International Criminal Tribunal for Rwanda	10	9	1	0	0
International Tribunal for the Former Yugoslavia	6	5	1	0	0
Total	**467**	**263**	**188**	**10**	**6**
Percentage	**100**	**56**	**40**	**2**	**1**
Total (2008-2009)	**676**	**437**	**54**	**6**	**10**
Percentage (2008-2009)	**100**	**65**	**8**	**1**	**1**

Note: The difference between the total number of 470 recommendations and the 318 recommendations included in the latest report on the status of implementation of recommendations (A/68/163) is explained by 38 recommendations on peacekeeping operations, 52 on UNHCR, 28 on UN-Women, an increase in 8 recommendations for UNEP and a decrease of 2 recommendations on UNODC.

[a] The United Nations peacekeeping operations have an annual financial cycle ending 30 June; therefore, the figures reported are for recommendations made up to 30 June 2012.

[b] These entities have an annual financial cycle; therefore the figures reported are for recommendations made up to and including 31 December 2012. From next year, all entities will report on an annual cycle.

United Nations A/69/178/Corr.1

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Financial reports and audited financial statements, and reports of the Board of Auditors

Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the biennium 2012-2013 and annual financial periods 2012 and 2013

Note by the Secretary-General

Corrigendum

1. Paragraph 6, first bullet

For the existing text *substitute*

All nine of the entities that implemented IPSAS in 2012 received an unmodified opinion again in 2013.

2. Table 1

For UNCDF,[c] *read* UNCDF[c,d].

For UNITAR, *read* UNITAR[a].

3. Paragraph 14, second and third sentences

For the existing text *substitute*

Those entities cannot be directly compared with those in table 2 as they do not fully report their assets and liabilities. However, based on the available information on assets and liabilities, the five entities can demonstrate their financial sustainability and liquidity to meet reported liabilities.

* A/69/150.

14-59970 (E) 280814

Please recycle

United Nations A/69/178/Corr.2

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Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the biennium 2012-2013 and annual financial periods 2012 and 2013

Note by the Secretary-General

Corrigendum

1. Corner notation

The number of the item on the provisional agenda should read as above

2. Paragraph 96

The second bullet *should read*

- For the 10 entities reporting annually, recommendations made by the Board in its reports for the biennium 2010-2011 reflect the status of implementation as at 31 March 2013.

* A/69/150.

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Concise summary of the principal findings and conclusions contained in the reports of the Board of Auditors for the biennium 2012-2013 and annual financial periods 2012 and 2013

Note by the Secretary-General

Corrigendum

Paragraph 4, second sentence

For (sect. D), *read* (sect. E).

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Macroeconomic policy questions: international trade and development

International trade and development

Report by the Secretary-General

Summary

As the international community moves towards defining the post-2015 development framework, the critical role of trade as a key enabler of inclusive and sustainable development remains to be fully articulated in the emerging sustainable development goals. International trade has undergone transformative shifts in size, structure and patterns over the past two decades, opening new opportunities and challenges. An open, transparent, predictable, inclusive, non-discriminatory and rules-based multilateral trading system remains an integral part of an enabling economic environment. The ninth Ministerial Conference of the World Trade Organization (WTO), held in Bali, Indonesia, from 3 to 9 December 2013, resulted in a package of declarations and other instruments, including the Agreement on Trade Facilitation. In the period following the Conference, WTO needs to clearly define the way forward so that the Doha Round can be concluded with the incorporation of development-related matters. The international trading system is facing fragmentation as the prevalence of regional and "plurilateral" processes increases, challenging the centrality and credibility of the multilateral trading system. In considering the creation of an enabling environment, such ongoing processes need to be factored in and coherence among policies at the national, regional and international levels needs to be enhanced, including for supporting productive capacities and greater participation in production processes to achieve sustainable growth.

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I. Introduction

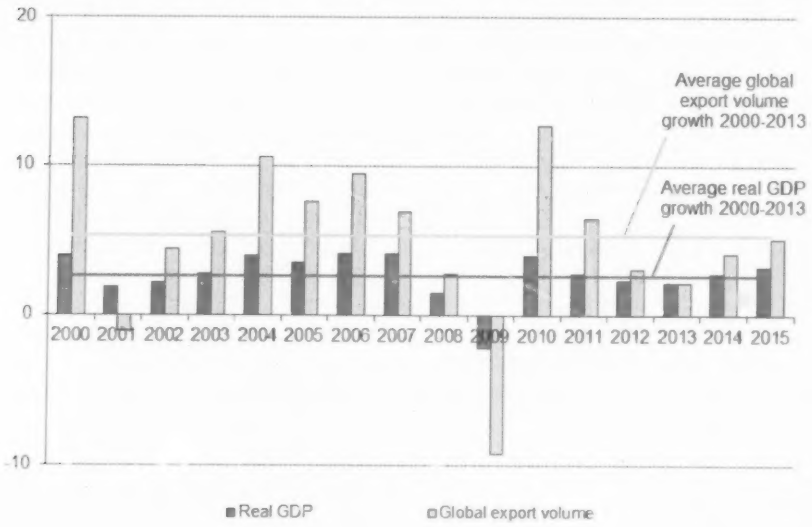
1. Under the right conditions, trade is instrumental for growth and development. Trade provides the means for small domestic markets to overcome constraints, allowing them to access larger external markets, as well as the skills, technology and capital needed to enable a better use of productive resources and catalyse structural transformation. Over the past decades, international trade has undergone a series of transformative shifts in size, structure and patterns. The manner in which trade contributes to the economy too has changed accordingly. These shifts have opened opportunities, as well as challenges, for a new path of growth towards the post-2015 imperatives of inclusive and sustainable development.

II. Evolutions in international trade

Recent trends

2. Trade has yet to regain the dynamism and the rapid growth trajectories of the years preceding the global economic crisis. In 2013, international trade in goods and services expanded at a modest pace of 2.2 per cent in volume terms, a rate that is below the average growth rate recorded between 2000 and 2013 and that is among the weakest of all years since 2002 (figure I).[1] Developing countries' exports expanded at a faster pace (3.2 per cent) than those of developed countries (1.6 per cent). The existing forecast suggests that trade will experience accelerated growth starting in 2014 and continue into 2015.

Figure I
Annual changes in world real GDP and exports (goods and services), 2000-2015



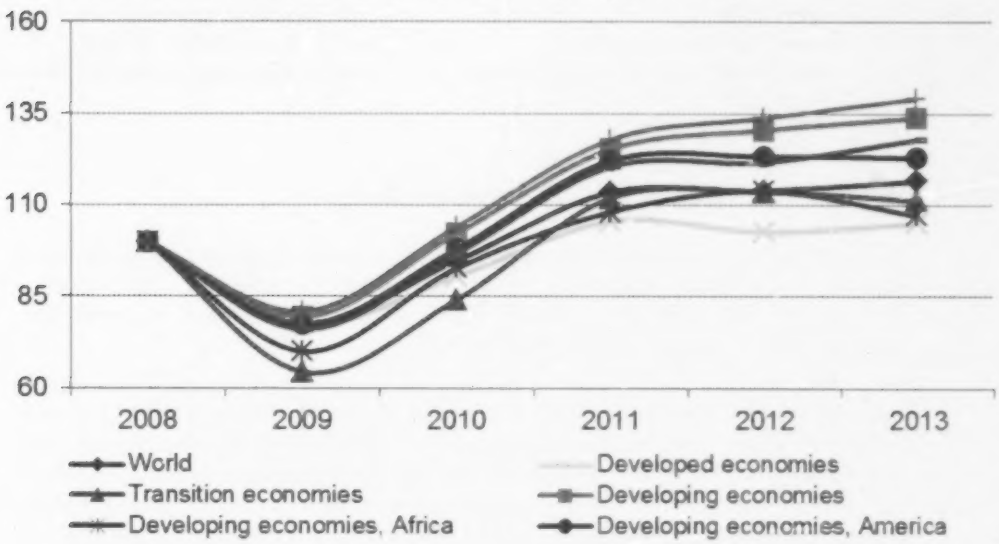
Source: Department of Economic and Social Affairs of the Secretariat.

[1] *World Economic Situation and Prospects 2014* (United Nations publication, Sales No. E.14.II.C.2) and update as of mid-2014.

3. Such a weak trade performance reflects continued stagnant growth in import demand in the world economy. Global output registered a sluggish growth rate of 2.2 per cent, down from 2.3 per cent in 2012. The growth rate was particularly weak in developed countries at 1.1 per cent; developing countries continued to pull the global demand by growing at a rate of 4.6 per cent. While world trade has tended to grow roughly twice as fast as the gross domestic product (GDP) since the 1990s, in the past two years trade has grown at a pace similar to that of GDP. To understand whether this reflects structural changes in the trade-development nexus or simply cyclical development, continued attention is warranted.

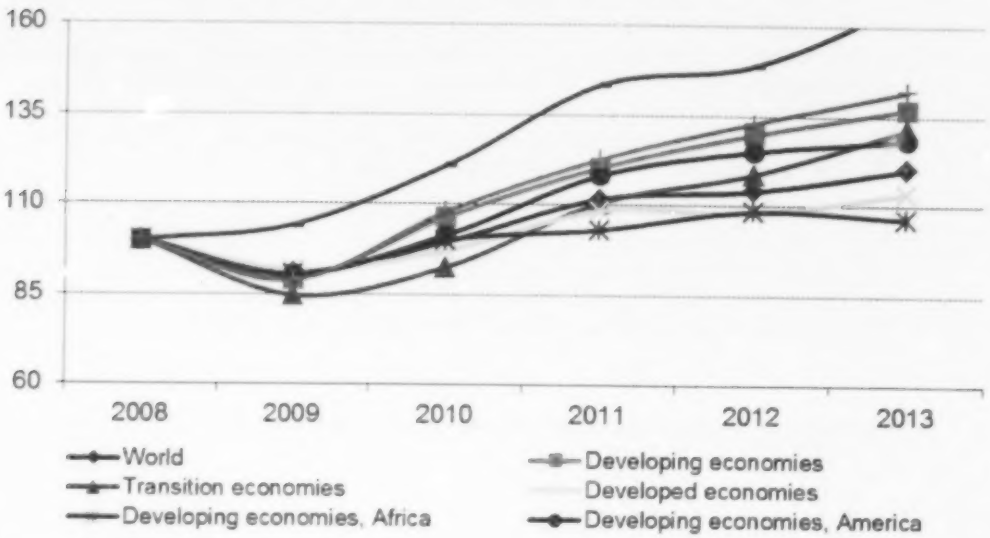
4. In nominal value terms, in 2014 world merchandise exports reached $18.8 trillion and services exports $4.7 trillion. It is clear that most developing regions, particularly Asia, have led the post-crisis global export recovery (figures II and III). Starting at a low level, the least developed countries exhibited a remarkably fast expansion in their services exports during the period 2008-2013.

Figure II
Evolution of merchandise exports by region, 2008-2013 (2008 = 100)



Source: UNCTADStat.

Figure III
Evolution of services exports by region, 2008-2013 (2008=100)



Source: UNCTADStat.

Longer-term trends and emerging challenges

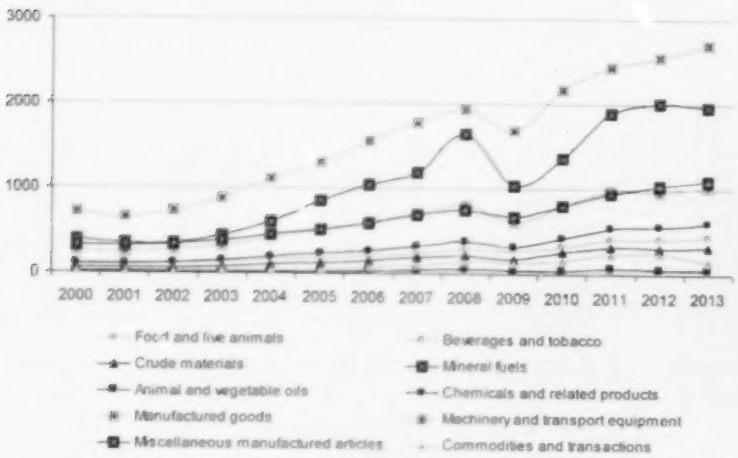
5. During the past decades there has been a dynamic expansion of world trade driven by technical advances, falling trade costs, a generally open trading environment and global value chains. The volume of world trade in goods and services increased five-fold from 1990 to 2013.

6. The increased participation of developing countries in world trade has driven this global trend: their share in world merchandise exports climbed from 24 per cent in 1990 to 32 per cent in 2000 and then to 45 per cent in 2013. Developing countries in Asia alone have come to represent 36 per cent of the world's merchandise exports in 2013. The increase in trade has been accompanied by rising real per capita incomes in all parts of the world. Average annual growth of per capita income grew faster during the 2000s than during any previous decade in most developing regions. There is a substantial variation in trade performance across countries, however, which is heavily skewed towards a handful of economies. The largest 20 exporters, in fact, most of which are from the developed and Asian regions, represent 70 per cent of world merchandise exports. While 75 developing countries experienced an average annual export growth rate of over 10 per cent between 2000 and 2012, five countries experienced export contraction and 60 registered persistent current account deficits, placing them at an inherent disadvantage in pursuing export-led growth.

7. The rapid expansion of developing countries' exports has been driven by the growing importance of manufactured goods since the late 1990s, with the expansion and deepening of trade within regional and global value chains in the production of goods such as electronics and motor vehicles (figure IV). Manufactured goods as a

share of non-fuel exports averaged around 83 per cent between 2000 and 2008 for developing countries, where the degree of technological intensity in products for exports increased markedly. Much of the trade that occurs within global value chains is intra-industry and intraregional. The expansion of global value chains has also been driven by the cross-border movement of capital, technology and know how. The United Nations Conference on Trade and Development (UNCTAD) estimates that about 80 per cent of global trade involves transnational corporations and that one third of the total is intra-firm in scope.[2]

Figure IV
Developing economies exports by product category, 2000-2013
(Billions of United States dollars)



Source: UNCTADStat.

8. An important aspect of trade in global value chains is that countries are required to import intermediate goods to produce and export processed goods or goods for final consumption. Trade in intermediate goods accounted for about 55 per cent of world trade in 2011. Trade in global value chains has allowed countries to specialize in specific tasks performed in a certain segment of the production network ("vertical specialization"), opening up opportunities for "fast-track industrialization". While some countries have benefited, this arrangement has also led to "thin industrialization", where a country specializes in low-skill labour-intensive activities without developing the ability to upgrade. The degree of value added varies across the value chain and certain production segments — often services such as research and development, engineering, product design and marketing — add more value than others (e.g., assembly lines), suggesting that it is important to upgrade and increase the sophistication of endogenous productive capacities, particularly in the services sector.

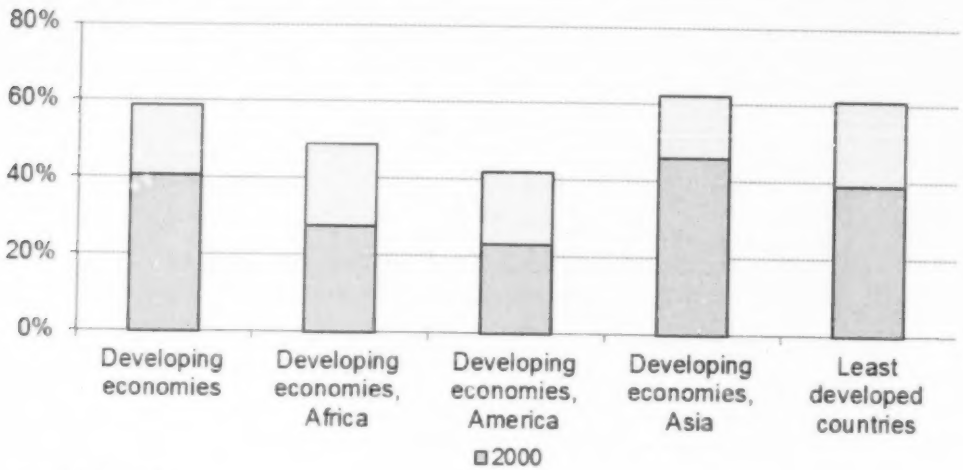
9. Dynamic growth in South-South trade, particularly intraregional trade, is in large part a reflection of the rise in trade within global value chains. South-South

[2] *World Investment Report 2013* (United Nations publication, Sales No. E.13.II.D.5) and *World Investment Report 2014* (United Nations publication, Sales No. E.14.II.D.1).

trade accounted for 59 per cent of developing countries' exports in 2013 and has come to make up one fourth of world merchandise exports (figure V). Growth in South-South trade is driven by Asia, which makes up 85 per cent of all South-South exports. In Asia, 50 per cent of South-South exports are intra-regional and tend to be more technology-intensive than other exports. This suggests that the high content of imported components in Asian exports has favoured intra-industry trade within the region and that the region has emerged as a production platform for the supply of goods to consumer markets, mainly in developed countries.

Figure V

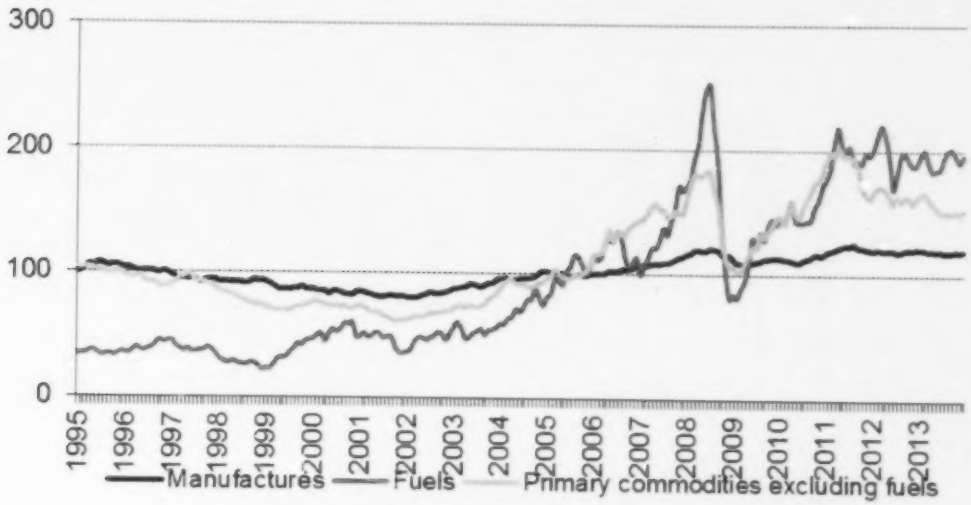
South-South merchandise exports as a share of total group merchandise exports, 2000 and 2013



Source: UNCTADStat.

10. The rise in commodity prices has underpinned the growth in the nominal value of world trade and improved terms of trade for many commodity exporters (figure VI). The export earnings of oil-exporting countries increased by 16 per cent between 2002 and 2013 and those of exporters of non-fuel minerals by 13 per cent, while export-related earnings increased by 9 per cent among major exporters of manufactured goods. Many undiversified commodity exporters relying on the export of natural resources and limited markets, such as the least developed countries, sub-Saharan Africa and, to a lesser extent, Latin America and West Asia, remain essentially marginalized from the mainstream of world trade and their export performance continues to be vulnerable to sudden price reversals and short-term variability. High commodity prices have accentuated traditional specialization patterns and might have discouraged industrialization. With the rise in food prices, concern over food security has become acute, as many agricultural commodity exporters increasingly specialize in export crops in exchange for importing staple food for domestic consumption. In 2012, only 4 of the total 13 developing country regions had a negative net balance in basic food trade.

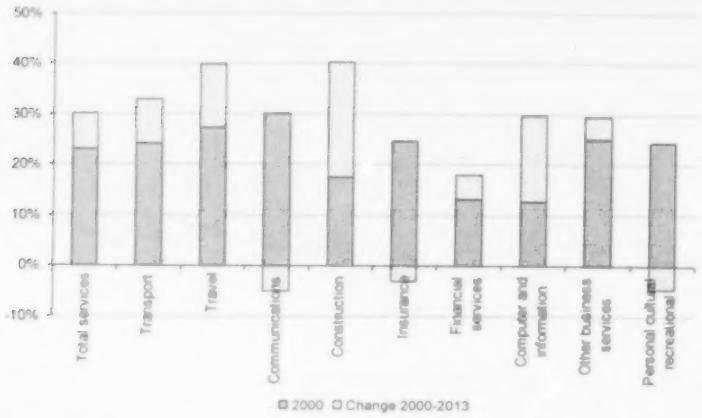
Figure VI
World price index of selected merchandise export groups, 1995-2013 (2005 = 100)



Source: CPB Netherlands Bureau for Economic Policy Analysis.

11. The growth of the services economy and of trade in services has been instrumental for sustained growth in world trade, as the services sector helps improve efficiency and competitiveness in all sectors. In 2012, services represented 14 per cent of the total export of goods and services for developing countries and 51 per cent of their GDP. From 2000 to 2013, developing countries' share in world services exports rose from 23 to 30 per cent, particularly in construction and computer and information services (figure VII). Services activities are pivotal for trade in the context of global value chains. Measured in trade in value-added terms, services account for 45 per cent of the value of world merchandise exports in 2009. Exports in modern exportable business and information and communications technology services have outpaced other services. These modern sectors have exhibited strong economies of scale and externalities, absorbing highly skilled labour.

Figure VII
Developing economies participation in world services exports by sector, 2000 and 2013



Source: UNCTADStat.

12. Transactions involving services often require that service providers and consumers be in the same place, and thus increasingly occur through foreign direct investment. UNCTAD estimates the value of all sales by affiliates at $35 trillion in 2013; assuming that half of that amount is attributable to services, trade through foreign affiliates could be in the order of $17 trillion, a figure that is three times greater than global cross-border services exports. Trade in services also requires the cross-border movement of people supplying services in export markets. Such movement, which is particularly important for the provision of professional and business services, appears to be increasing, if the continued growth in global remittance flows is any indication. In 2013, developing countries received $404 billion in remittances and global remittances stood at $542 billion.[3]

13. Many countries continue to face challenges in making economic growth inclusive and sustainable. The global unemployment rate remains persistently high at around 6 per cent, with some 199.8 million people unemployed. The average unemployment rate in developed economies in particular has risen sharply, to 8.5 per cent in 2013, affecting youth and those in long-term unemployment particularly hard (12 million). Pervasive unemployment and suppressed wages over the past three decades have led to a fall in the share of world labour income in world gross output, from over 62 per cent in 1980 to 54 per cent in 2011.[4] The high level of informal employment (40-50 per cent) remains an important concern in these countries and poverty ratios are still high in low-income developing countries, at above 45 per cent.[5]

14. The evolutions of the trade landscape depicted above suggest that the efficiency gains derived from trade integration still have not been translated into

[3] World Bank, Migration and Development Brief No. 22 (Washington, D.C., 2014).
[4] *Trade and Development Report 2013* (United Nations publication, Sales No. E.13.II.D.3).
[5] International Labour Organization, *World of Work Report — 2014: Developing with Jobs* (Geneva, 2014).

broad-based development through conscious policy efforts. Doing so will require coherent and integrated policy interventions that are supportive of structural transformation, at the macroeconomic and individual sectoral levels, to build robust and broad-based productive capacities that allow for diversification, technological upgrading and job creation.

III. Developments in the multilateral trading system

15. The international trading system is expected to provide an overarching enabling environment in which it is possible for trade to play a catalytic role in fostering sustainable development. Despite recurrent setbacks, multilateralism remains a global public good to be supported and upheld, and continues to represent the best guarantee for all countries, particularly small countries, against protectionism and discrimination. The difficulties experienced by WTO members in bringing the 12-year-long Doha Round negotiations to a conclusion have underlined the need to seek new ways to foster multilateral consensus in addressing trade barriers and enhancing more open and fairer international trade. The current architecture and instruments of the international trading system need careful review to assess what adaptations are necessary in order to deal more effectively with rapidly evolving economic realities and development policy priorities in the twenty-first century.

Doha Round

16. The Doha Round was launched in 2001 with a broad-based agenda. Its negotiations, which are described as a "single undertaking", give priority attention to developing countries' implementation difficulties and to the issue of special and differential treatment to redress the imbalances left over from the previous Uruguay Round, as well as to the two items, built into the agenda, of agriculture and services, carried over from that Round. Prolonged negotiations, recurrent setbacks and the growing prevalence of alternative negotiating forums, such as regional and plurilateral processes, were increasingly perceived as affecting the credibility of multilateralism and significantly raised the stakes at the ninth WTO Ministerial Conference. At issue in the run-up to the Conference, which was held in Bali, Indonesia, from 3 to 6 December 2013, was therefore the search for concrete "deliverables", focusing on trade facilitation, and several agricultural and development issues, to enable a conclusion of the entire Doha Round.

17. Participants in the ninth Ministerial Conference adopted the Bali Ministerial Declaration and a set of ministerial decisions, understandings and declarations known as the "Bali package". The package includes five ministerial decisions and a declaration on agriculture in respect of: (a) the definition of "general services"; (b) public stockholding for food security purposes; (c) an understanding on tariff-quota administration; (d) export competition; (e) cotton; and (f) a ministerial decision on the Agreement on Trade Facilitation. The package also included four ministerial decisions on development-related issues, namely: (g) preferential rules of origin; (h) the implementation of the least developed countries services waiver; (i) duty-free, quota-free market access for least developed countries; and (j) a monitoring mechanism on special and differential treatment. Because the 10 texts were negotiated as a package, achieving a balance between ambition and interests within and across the subject matters was a key stumbling block. Some topics with

practical economic value, trade facilitation and food security in particular, formed the core of the negotiations.

Trade facilitation

18. The negotiations on trade facilitation were aimed at clarifying and improving the provisions on customs procedures in respect of articles V (freedom of transit), VIII (fees and formalities) and X (publication and administration of trade regulations) of the General Agreement on Tariffs and Trade. At issue was improving customs procedures so as to facilitate trading activities. Such an improvement is expected to bring about gains similar to tariff reductions, given that unduly onerous customs procedures raise trade costs. World Bank and World Economic Forum estimates suggest that getting countries even half way towards adopting best practices in trade facilitation would add 4.7 per cent to world GDP. The trade facilitation indicators of the Organization for Economic Cooperation and Development estimate that comprehensive implementation of all measures in the Agreement on Trade Facilitation would reduce total trade costs by 10 per cent in advanced economies and by 13-15.5 per cent in developing countries. Reducing global trade costs by 1 per cent would increase worldwide income by more than $40 billion, most of which would accrue in developing countries.

19. A legally binding outcome on trade facilitation had been called for mainly by major countries that were actively engaged in export activities and were seeking a meaningful outcome for their exporters and service providers (e.g., express delivery services). While recognizing the case for trade facilitation, developing countries not adopting international best practices and lacking institutional capacities were concerned over implementation costs, as the implementation of some measures — e.g., risk management — was found to be relatively costly while other measures that were heavily relied upon — e.g., the use of customs brokers, "consularization" (i.e. authentication of export documentation by the consular office in exporting countries) and pre-shipment inspection — were difficult to eliminate.

20. The final text of the Agreement on Trade Facilitation — the first binding multilateral agreement negotiated since the Uruguay Round — is composed of 12 articles dealing with some 40 substantive customs procedures (sect. I) and special and differential treatment provisions for developing countries (sect. II). Among the substantive provisions, legally binding disciplines were introduced on some of the core customs measures, such as on advance ruling, pre-arrival processing, release of goods, post-clearance audit, authorized operators and expedited shipments. "Best endeavour" language and special provisions were applied to measures of particular importance to some specific countries, for example on the use of single-window systems and on the prohibition of pre-shipment inspection and customs brokers. Most of the contentious issues, such as proposed texts on banning consularization practices, extending freedom of transit for the transportation of oil and gas through pipelines and fixed infrastructure, as well as to trucking transport, were dropped from the text.

21. It is significant that the Agreement contains an unprecedented form of special and differential treatment for developing countries, one which formally establishes a linkage between countries' implementation capacity, the provision of capacity-building support and the timing and level of commitments. Developing countries enjoy the right to self-designate and implement different obligations according to

different implementation schedules and subject to the transition period and the actual availability of capacity-building opportunities.

Least developed countries issues

22. While least developed countries had called for fully delivering on issues specific to them at the ninth Ministerial Conference, the outcomes in the development pillar may be seen as relatively modest in economic or legal effect. Duty-free, quota-free market access is an agreed international development target already contained in the United Nations Millennium Declaration, adopted in 2000, and in the Programme of Action for the Least Developed Countries for the Decade 2011-2020, which set the target of doubling the share of exports of least developed countries by 2020. Only hortatory provisions were provided on duty-free, quota-free market access, with participants calling for expeditious improvement in duty-free, quota-free coverage (by 2015) for those countries that had not yet extended duty-free, quota-free market access for 97 per cent of tariff lines. The outcome on preferential rules of origin takes the form of non-binding guidelines for making rules of origin simpler and more transparent.

The way forward

23. The outcome of the ninth Ministerial Conference was important first and foremost for regenerating confidence in the multilateral trading system and paving the way for a sober reflection on how to proceed with multilateral negotiations. Because it was not a substitute for the Doha Round, however, WTO members still had to prepare a clearly defined work programme in order to move forward on the remaining issues of the Doha Round by the end of 2014, prioritizing issues in respect of which legally binding outcomes had not been achieved at the Conference, and all other Doha issues central to concluding the Round, while also fully exploring different negotiating approaches. It is expected that the work programme will not preclude the adoption of plurilateral or sectoral approaches, which could affect the integrity of the single undertaking. Ongoing discussions have pointed to some key principles that will inform the contents and process of the post-Bali work: (a) the need for taking a balanced approach to agriculture, non-agricultural market access and services; (b) the centrality of the development dimension; and (c) the need to focus on "doables". Views differ on whether or not to use the draft modality text on agriculture and non-agricultural market access of 2008 as the basis of future work, with developing countries preferring to maintain them as a basis.

24. In this process of identifying and composing a balanced package of issues for negotiation in the context of the post-Bali work programme, it is important that new trade and trade policy developments affecting individual negotiating areas be considered. For instance, the economic and policy environment surrounding agricultural negotiations has evolved significantly since 2008. The increased level and volatility of food and agricultural commodity prices have sharpened food security and rural livelihood concerns and prompted many net-food-importing developing countries to secure the domestic food supply through a variety of policy interventions, such as production support, public stockholding and uninterrupted purchases in the international markets (addressing export restrictions). The incidence of import surges too is increasingly being felt. High prices and national agricultural policy reform processes have led to a substantial reduction in the use of trade-distorting support, including through "box-shifting" (a practice by which

countries' domestic support policies are shifted from either the amber or blue boxes, which contain relatively more trade-distorting domestic policies, to the green box, which contains policies that do not distort trade or do so only minimally), and export subsidies in traditional subsidizing countries. Tariff protection too has declined, while the incidence of non-tariff barriers is more strongly felt, particularly for developing countries.

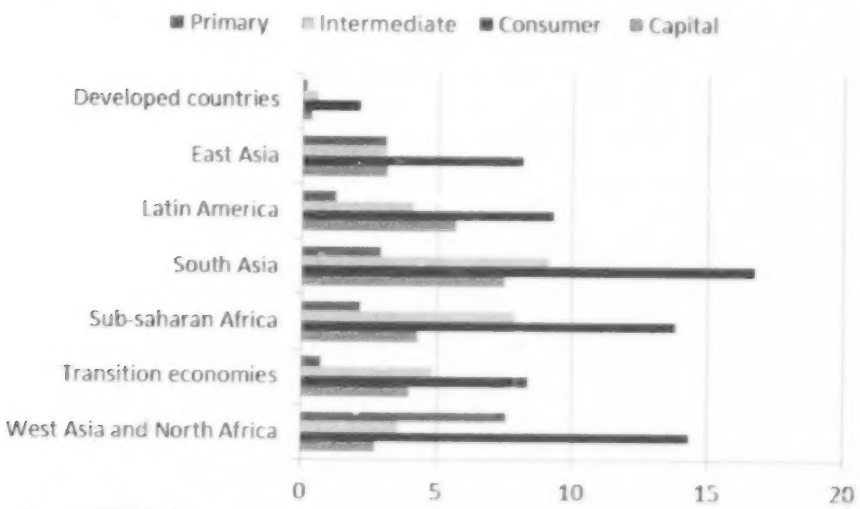
25. The ability to gain and benefit from market access depends increasingly on compliance with trade regulatory measures such as sanitary requirements and goods standards. These non-tariff measures represent a challenge for exporters, importers and policymakers. On average, it is estimated that the trade restrictiveness arising from non-tariff measures is about twice as high as the restrictiveness stemming from tariffs. In agriculture, a sector of particular importance to many developing countries, the average restrictiveness of non-tariff measures is about 20 per cent, much higher than that of the average tariff, which is about 7 per cent. The costs of compliance are disproportionately high for smaller and poorer countries, as high-income countries have internal capacities to comply with technical measures while many low-income countries do not. UNCTAD has quantified the additional distortionary effect on trade of a developed country's sanitary and phytosanitary measures to a value equivalent to 14 per cent of the total agricultural trade from lower-income countries.

26. As regards industrial products, while there has been a significant reduction in the tariffs applied in developing countries, as many countries seek to build endogenous manufacturing capacities and employment, the sensitivity to tariff reductions in the manufacturing sectors seems to have risen, particularly with regard to key consumer products that, in many countries, continue to benefit significantly from protections (figure VIII). Increasingly, manufacturing exports are destined to regional markets, pointing to the importance of regional integration efforts.

Figure VIII

Tariff restrictiveness, by stage of processing

(Percentage)



Source: UNCTAD.

27. The composition of the post-Bali work programme is likely to be influenced by parallel plurilateral and regional processes. In July 2014, 14 countries representing 86 per cent of the global trade in environmental goods launched plurilateral negotiations for an environmental goods agreement. Participants argued that liberalization in that area would promote green growth and sustainable development while providing an impetus for the conclusion of the Doha Round. The negotiations are open to any WTO member and the results will be extended, on a most-favoured-nation basis, to all WTO members. The negotiations would be based on a list of 54 environmental goods identified by the countries of the Asia-Pacific Economic Cooperation in 2012 to reduce import tariffs to 5 per cent or less by the end of 2015. These goods include wind turbines, air quality monitors and solar panels. The aim of the first phase of the negotiations is to eliminate tariffs on a wide range of environmental goods; during the second phase, non-tariff barriers affecting environmental products and services would be addressed.

28. Another plurilateral initiative, involving 23 WTO members representing 70 per cent of global trade in services, covers negotiations for a trade in services agreement. The negotiations are reported to aim at comprehensive and ambitious services liberalization by capturing autonomous and preferential liberalization and seeking to adopt horizontal application of national treatment to all sectors and modes of supply, as well as addressing some regulatory issues. The agreement is expected to build upon the General Agreement on Trade in Services approach to promote subsequent multilateralization and participation of new members. The automatic multilateralization of the trade in services agreement currently being negotiated, on the basis of the most-favoured-nation principle, has temporarily been postponed because there is not a critical mass of supporting WTO members, which implies that the future trade in services agreement will be a preferential agreement to be covered under article V of the General Agreement on Trade in Services. The implications for development of any trade in services agreement provisions on market access and rules for both participants and non-participants and for the multilateral trading system need careful assessment. Furthermore, plurilateral requests made under the Doha Round suggest that the overall export interests of participants in the agreement may lie primarily with those not participating in the agreement. Plurilateral discussions also continue, despite currently being on hold, on expanding the product and country coverage of the existing WTO Agreement on Information Technology. The revised Agreement on Government Procurement concluded in 2012 became effective in April 2014.

Systemic issues

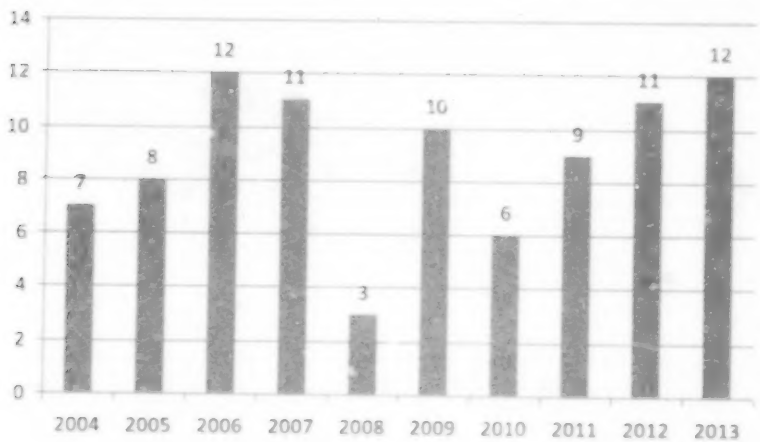
29. While the prolonged Doha Round negotiations tend to attract much attention, WTO performs a multitude of non-negotiating functions that are fundamental to the transparency, predictability and stability of international trade. Taken together, the multilateral trading system as embodied in WTO continues to serve as a unique global public good and to enjoy legitimacy. Nonetheless, it also faces the important challenge of having to better adapt to the evolving trade realities and policy needs of the twenty-first century.

30. Existing WTO rules and provisions serve as guarantors against protectionism and discrimination in international trade. In the aftermath of the global economic crisis, a generalized surge in protectionism was much feared globally but was relatively well contained, essentially thanks to countries' adherence to WTO norms

and self-restraint. That important function of the multilateral trading system needs to be upheld, as there is always a risk that countries may resort to measures that restrict trade. In a recent report, WTO found that members of the Group of 20 had put in place 112 new measures restricting trade during the period from mid-November 2013 to mid-May 2014.[6] Trade remedy actions account for over half of those new restrictive measures. While the share of trade affected by those measures remains marginal (0.2 per cent of world merchandise imports), care is needed, as the vast majority of measures restricting trade that have been taken since the global crisis (934 of 1,185) remain in place and are estimated to cover around 4.1 per cent of world merchandise imports.

31. It is widely recognized that the WTO dispute settlement mechanism functions well, as countries continue to make recourse to it. Twelve panels were established in 2013, a 10-year high after several years of constant growth since 2008 (figure IX). This indicates that the WTO dispute settlement system enjoys unaffected legitimacy but also that there are rising tensions in trade relations. Recent disputes have increasingly addressed measures reflecting "global concerns" lying at the interface of trade and neighbouring public policy areas, such as packaging regulations in the tobacco industry, measures promoting renewable energy (wind and solar power technology), including through the domestic content requirement, the sustainable exploitation of natural resources (raw materials and rare earths) and animal welfare (treatment of seals and dolphins). At the same time, "traditional" disputes continue to be raised under the dispute settlement mechanism, including on anti-dumping and subsidies.

Figure IX
Number of panels established



Source: WTO.

32. The legitimacy of the multilateral trading system is also evidenced by the fact that it continues to attract new members and therefore appears to be headed towards universality. A total of 32 countries have acceded since 1995, bringing the number

[6] WTO, "Report on G-20 trade measures" (16 June 2014).

of WTO members to 160, with Yemen being the most recent member. Seychelles is expected to accede by the end of 2014. These countries have embarked on substantial policy reforms to bring their trade regime in conformity with WTO rules. Crafting terms of accession that are balanced and consistent with their development needs has been a major challenge.

Accession by the least developed countries to WTO: the case of Yemen

Yemen has agreed to a series of commitments as part of its WTO accession package. While a set of guidelines has been adopted to facilitate accession by the least developed countries, it did not apply to Yemen. The accession package of Yemen illustrates that important reform efforts are required of a country acceding to WTO. On market access, Yemen has bound all tariffs to an overall average level of 21.1 per cent, compared with the current average applied rate of 7.1 per cent. As regards services, Yemen has made commitments in 11 service sectors encompassing 78 subsectors, including financial and communications services. In banking, starting five years after accession, international banks are allowed to establish branches without limitations. On telecommunications, all existing market access limitations are to be lifted by 1 January 2015.

33. While the public-good nature of the multilateral trading system is not questioned, the system increasingly faces challenges in terms of reinforcing its relevance and credibility. To counter those challenges, it is important that it deliver the negotiated outcomes of the Doha Round and strengthen its architecture to better respond to changing economic realities and global challenges. Various "twenty-first century trade issues" have been proposed by different commentators as items on the future agenda of the multilateral trading system. For instance, some have argued that the increased prevalence of trade within global value chains calls for shifting the focus of trade liberalization approaches towards deeper liberalization, addressing the "trade-investment-services nexus" and adopting "a whole of supply chain" perspective, including by addressing tariff and non-tariff regulatory barriers throughout the global value chain cluster of activities. This argument needs to be weighed against the fact that tariff protection remains prevalent even in countries integrated in global value chains, and that tariff and industrial policy interventions continue to be used to build productive capacity and promote upgrading within global value chains.

34. Others have suggested that the "WTO rule book" (the rules and provisions contained in WTO agreements) should be updated to better reflect the increased interaction of trade with broader public policy goals, as such interaction has increasingly emerged as a new source of trade disputes. The priorities identified by WTO members in the Bali package (trade facilitation and food security) already reflect the changing policy focus to promote trade in global value chains and address interaction between trade and food security. Other suggested agenda items include the ever-closer relationship between trade, climate change and green growth (e.g., border tax adjustment related to emission trading schemes, local content subsidies, trade-related investment measures and government procurement for

renewable energy). As with food prices, high energy prices have heightened the concern over access to energy and raw materials (renewable and fossil fuel subsidies and export restrictions). Exchange rate misalignment has increasingly been regarded as a major defining factor of international competitiveness.

35. The manner in which the Doha Round has evolved over the past 12 years indicates the importance of strengthening the negotiating function of WTO in the future.[7] In retrospect, a long agenda dealing with issues that went beyond the built-in agenda of agriculture and services delayed progress. The appropriate level of contribution to be made by developed and developing countries became a persistent stumbling block, leading some commentators to question the continued validity of the current architecture of special and differential treatment and to favour differentiation. Some institutional factors underpinning the negotiations, such as consensus-based decision-making, a large and diverse membership, the single undertaking principle, an outsized negotiating agenda, a lack of leadership and weakened business interest, were also found to be compromising the efficiency of negotiations. In the long run, careful reflection is needed on how best to strengthen the negotiating function of the multilateral trading system given the existence of parallel plurilateral and regional negotiating processes.

IV. Regional trade agreements

36. The most significant challenge to the multilateral trading system is the increased prevalence of regional trade agreements. As at 31 January 2014, some 583 notifications were made to WTO, of which 377 were in force. Each developed country had preferential access to an average of 23 countries in 2012, and about 60 per cent of their trade was covered by some regional trade agreement.[8] By developing cutting-edge disciplines, so-called "mega-regional trade agreements" are also expected to set a new template for future trade and investment cooperation. "Twenty-first century regional trade agreements" differ qualitatively from previous regional trade agreements in terms of scope, composition and depth. They are oriented towards a deeper and comprehensive integration with a strong regulatory focus to provide a viable platform for regional value chains by ensuring a duty-free and non-tariff barrier-free trading environment, through deep regulatory integration, to make the regulatory system more compatible and transparent. In addition to promoting fully open markets, such agreements now encompass a range of behind-the-border regulatory measures, including investment, competition policy, capital movement, intellectual property rights and government procurement.

37. The recent emergence of mega-regional trade agreements has brought about a change of quantum proportions in regional trade agreements such as the Trans-Pacific Partnership Agreement, the Transatlantic Trade and Investment Partnership Agreement and the Regional Comprehensive Economic Partnership Agreement, all of which aim to create giant economic zones covering a substantial proportion of world trade in goods and services (see table below).

[7] For instance, see: *WTO, The Future of Trade: The Challenges of Convergence — Report of the Panel on Defining the Future of Trade convened by WTO Director-General Pascal Lamy* (24 April 2013).

[8] See UNCTAD/DITC/TAB/2013/2.

Comparison of mega-regional trade agreements

Agreements under negotiation	*Number of members*	*Share in world exports (goods and services)*	*Intra-group exports as a share of global exports*	*Intra-group imports as a share of global imports*	*Combined GDP as a share of world GDP*	*Number of other bilateral agreements among the parties*
Pacific Alliance	4	2.6	3.9	4.5	2.8	6
Regional Comprehensive Economic Partnership Agreement	16	27.2	42.0	47.4	29.5	23
Trade in services agreement	23	64.5	72.2	64.1	67.3	
Trans-Pacific Partnership Agreement	12	24.3	46.3	38.3	38.9	25
Tripartite Free Trade Agreement	26	2.0	19.0	18.8	1.6	4
Transatlantic Trade and Investment Partnership Agreement	2	42.9	57.8	48.8	45.4	0

Source: UNCTADStat and WTO.

38. Mega-regional trade agreements are qualitatively different from previous regional trade agreements in size, depth and systemic consequences. By inducing deeper liberalization and high-standard, cutting-edge regulatory harmonization covering an increasing share of world trade, they could further affect incentives for multilateralism, especially in market access for goods, services, investment and government procurement, and could further erode the primacy of the multilateral trading system, which is built on the non-discrimination principle. Once the Trans-Pacific Partnership Agreement, the Transatlantic Trade and Investment Partnership Agreement and the Regional Comprehensive Economic Partnership Agreement have been concluded, most-favoured-nation duties would apply only to a few countries in the European Union and the United States of America. This would have significant implications for countries' incentive to negotiate most-favoured-nation tariff reductions at the global level. Regulatory harmonization pursued in the context of certain mega-regional trade agreements could further strengthen expected commercial gains from deep regional integration, while some issues with systemic implications, most notably domestic agricultural support, could be negotiated only at the multilateral level. These new trends in mega-regional trade agreements and their implications for development only strengthen the need to emphasize the primacy of the multilateral trading system with a view to achieving the post-2015 sustainable development agenda.

39. From a development perspective, these agreements and twenty-first century regional trade agreements more generally might represent a risk for weaker and more vulnerable developing countries, which can simply be left out. When they do take part, locking in existing preferential conditions under unilateral preferential arrangements is often a key motivation in North-South regional trade agreements. Larger developing countries face challenges in effectively securing improved market access under regional trade agreements, as these often preserve high tariffs on import-sensitive products, including dairy, sugar and apparels, that attract high levels of protection on a most-favoured-nation basis.

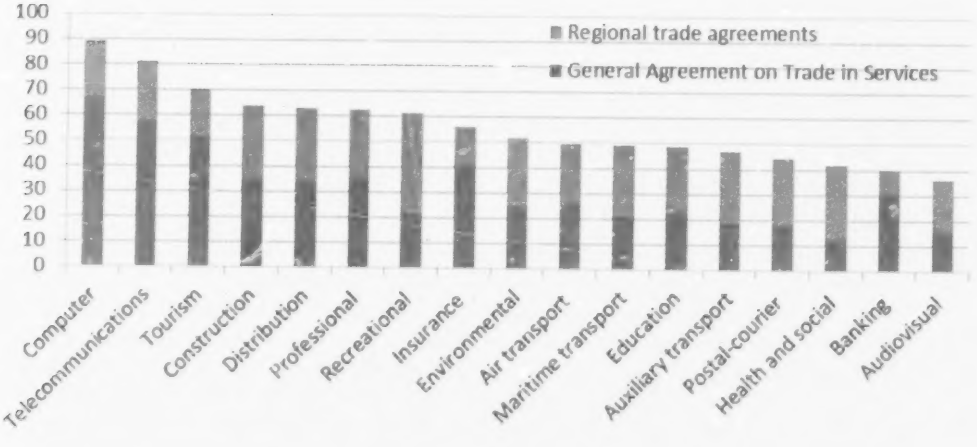
40. In a new generation of North-South regional trade agreements, ensuring that the content of a given agreement is adequate and that the pace and sequence of a member's liberalization is right are key concerns of developing countries. Some new

regulatory issues that are not covered by WTO, such as investment, competition, labour and environment standards, export taxes and restriction on raw materials and energy, and personal data, are included, while more stringent commitments and rules than are imposed by WTO, on such matters as standards, services, government procurement and intellectual property rights, are introduced. It is therefore of critical importance that market-opening objectives be balanced with the flexibility to design and implement measures to build essential productive capacities and move up on the value ladder.

41. Trade in services has increasingly become a major feature of regional trade agreements, particularly those between the North and the South. Globally, one third of regional trade agreements have services commitments. The level of General Agreement on Trade in Services and regional trade agreement commitments varies across sectors (figure X). Computer and telecommunications sectors appear to be the most open of all the service sectors under the General Agreement and continue to see further liberalization under regional trade agreements. Three transport subsectors (maritime, air and auxiliary) generally receive a particularly low level of General Agreement commitments among all infrastructure services sectors but see relatively significant improvements under regional trade agreements. By contrast, financial services exhibit a relatively high level of General Agreement commitments but see the least improvement in the regional context, particularly in banking. This may be because the scope for preferential treatment is larger for transport services, for which geographical proximity or special bilateral relationships matter, than for financial services, for which preferential treatment might give rise to regulatory arbitrage.

Figure X

Average level of General Agreement on Trade in Services and regional trade agreement commitments for all countries



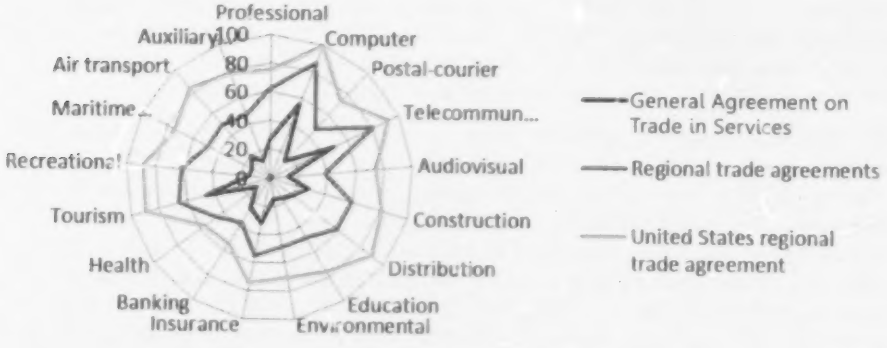
Source: UNCTAD calculation based on WTO dataset.

42. For developed countries, regional trade agreement commitments represent only limited improvements from their General Agreement commitments, although these

countries generally register a higher level of General Agreement commitments than developing countries. Virtually no commitments going beyond the provisions of the General Agreement (in the sense of promoting deeper liberalization or more stringent rules) are registered in computer, telecommunications and financial (banking) sectors, while modest improvements are notable in transport. In contrast, in developing countries, regional trade agreements appear to have had a stronger effect in inducing liberalization. The level of regional trade agreement commitments is significantly higher than General Agreement commitments in all sectors (figure X). This is in part due to the fact that developing countries' initial General Agreement commitments are relatively low; that said, some countries, especially acceding countries, have made significant commitments. Another explanation may lie in the asymmetric bargaining structure of North-South regional trade agreements. A particularly high level of openness has been achieved in all sectors by developing countries that have concluded regional trade agreements with the United States, including in those sectors often considered sensitive, such as postal and courier, transport, professional and financial services (figure XI).

Figure XI

Average level of General Agreement on Trade in Services and regional trade agreement commitments for developing countries



Note: The United States preferential trade agreement includes Bahrain, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea and Singapore.

Source: UNCTAD calculation based on WTO dataset.

43. While different liberalization approaches used under regional trade agreements (negative vs. positive lists) could have different implications for the extent of liberalization of the service sector, recent regional trade agreements have introduced innovations for triggering deeper liberalization. For instance, commitments may be based on market access conditions, including through stand-still requirements (i.e. requirements that do not allow countries to decrease the degree to which they conform with their respective obligations) and the application of the "ratchet clause", which provides for the automatic incorporation of further liberalization measures in the future. National treatment may be applied on a horizontal basis to all sectors and modes. The third-party most-favoured-nation clause that has increasingly been incorporated in recent regional trade agreements has the objective of ensuring, as the General Agreement on Trade in Services most-favoured-nation

principle does not, that a party to a regional trade agreement obtains the best possible preferential treatment available in other partners in such regional agreements. Applied in North-South regional trade agreements, this has raised concerns that the clause could dissuade the party from engaging in ambitious market-opening steps with a third party, including under South-South regional trade agreements.

44. The focus of emerging twenty-first century regional trade agreements would shift towards regulatory harmonization to reduce divergence in national standards affecting trade. Proposals include provisions on regulatory coherence, whereby each member is required to have an institutional mechanism at the national government level to facilitate central coordination and review of new "covered regulatory measures", so as to promote convergence. This would include conducting impact assessments of a regulatory measure in the light of the objective and efficiency in line with the existing practices in some countries. This could constrain the ability of regulatory authorities and could prove to be difficult to implement in some developing countries with weaker institutional capacities and resources. It is expected that regulatory provisions emerging from such regulatory coherence adopted in the framework of mega-regional trade agreements (e.g., the Transatlantic Trade and Investment Partnership Agreement and the Trans-Pacific Partnership Agreement) may be more likely to be followed around the world, thus creating a regulatory "race to the top". International disciplining of national regulatory processes and frameworks through essentially trade-liberalizing processes under regional trade agreements has also prompted concern over possible adverse effects on national regulatory autonomy in essential and infrastructure services.

45. Regional trade agreements often incorporate provisions on intellectual property rights going beyond the Agreement in Trade-Related Aspects of Intellectual Property Rights that affect various public policies, ranging from health to innovation. The main features of recent regional trade agreements is that they expand significantly the protection of certain categories of intellectual property rights and enhance title holders' rights while limiting exceptions and limitations for users of intellectual property rights. For instance, some provisions of regional trade agreements have led to higher levels of intellectual property right protection, such as: patent protection for longer than 20 years; copyright extension from 50 years to 70 years after the death of the creator; at least five years of data exclusivity; rules on national treatment without exceptions; easier access to genetic resources and acceptance of genetically modified organisms; the extension of trademark protection beyond visible trademarks; stronger protection for digital technologies; and the patenting of plants and animals.

46. Regional trade agreements have also had an effect on the liberalization of government procurement, a market representing 10-15 per cent of GDP. Government procurement has long served as an important industrial and public policy instrument to support local suppliers and small and medium-sized enterprises, social inclusion and technological development. While domestic preference policies requiring local content (e.g., "by national") have historically contributed to the establishment of some strategic industries, such policies are generally unregulated under WTO for most developing countries not party to the Agreement on Government Procurement; moreover, such important policy flexibilities are increasingly restricted by regional trade agreement provisions. For instance, regional trade agreements have effectively increased the number of countries using Agreement on Government Procurement-

type rules, as those countries that are not party to the Agreement (e.g., Chile) have agreed to comply with its rules.

47. Recent mega-regional trade agreement negotiations have sought to address the potentially anti-competitive effect of State-owned enterprises, which tend to receive some preferential treatment, including preferential financial treatment, thereby attracting focused attention. Some regional provisions have sought to establish "competitive neutrality" between State-owned and private companies by eliminating such structural advantages. Many countries have stressed the importance of State-owned enterprises in delivering public policy goals, including in the energy, telecommunications, postal and courier and financial services sectors. Concern over possible limitations in regulatory autonomy have also arisen in relation to the increasing incorporation of an investor–State dispute settlement mechanism in regional trade agreements. Such a mechanism is seen to confer greater rights to foreign investors and lead to a "regulatory chill", as regulators might refrain from taking certain regulatory actions (e.g., environmental regulations) for fear of legal challenge under the mechanism (e.g., telecommunications and energy).

48. Consolidation and expansion of South-South regional integration initiatives is increasingly pursued as a viable strategy to provide a platform for supporting developing countries' integration into regional value chains. South-South regional trade agreements now represent two thirds of all such regional agreements in force. Developing countries are increasingly making use of South-South regional integration to promote economies of scale, diversification and resilience. In addition to allowing the exploitation of economies of scale, South-South integration initiatives serve as a development launch pad to global integration, promote trade in non-traditional goods and have the potential to facilitate diversification. In Africa, efforts are directed at boosting intra-African trade by fast-tracking the establishment of a continental, pan-African free trade agreement (the continental free trade area) by 2017, building upon the existing tripartite initiative among the East African Community, the Common Market for Eastern and Southern Africa and the Southern African Development Community, and other regional economic communities. In Asia, developing economies were actively engaged in regional trade agreements in the 2000s, particularly with other Asian countries. The Association of Southeast Asian Nations (ASEAN) is working towards the formation of an ASEAN free trade area in 2015 to support the creation of an ASEAN economic community in 2020. The Regional Comprehensive Economic Partnership would encompass the majority of existing regional trade agreements. In Latin America, there have been major challenges to economic integration over the years. Efforts continue to be made, using different formats and initiatives, to find viable and sustainable development strategies through existing integration arrangements, such as the Central American Common Market and the Southern Common Market (MERCOSUR), as well as newly launched initiatives such as the Pacific Alliance (Chile, Colombia, Mexico and Peru). Regional trade agreements act as platforms for the development of productive capacity, regional transport, infrastructure networks and the connectivity essential for provision of infrastructure services. Such cooperative initiatives, along with liberalization, have proved to be essential components of regional development.

49. The quantitative expansion and proliferation and the qualitative deepening of regional trade agreements points to the need for coherence between the multilateral trading system and such agreements. It is important to secure convergence between

the multilateral and regional processes to ensure an optimal mixture of both arrangements, as well as coherence among regional processes, so that all of them can, in their totality, create an environment that facilitates sustainable development. There is also a need for strong multilateral oversight and effective provisions, including by setting minimum standards for regional regulatory provisions. Developmental coherence is required so that special and differential treatment and the policy space available under the multilateral trading system is not taken over by regional trade agreements.

V. Conclusion

50. International trade and the international trading system have witnessed a significant transformation towards fragmented production, multi-polarization and regionalization, with integration proceeding at different speeds for different countries. Trade continues to play a major role in development and should be firmly anchored in the post-2015 development agenda as a major enabler of inclusive and sustainable development. When properly harnessed, the opportunities brought by international trade can be a powerful force for creating jobs, enabling the efficient use of resources, providing incentives to entrepreneurs and, ultimately, improving the standard of living in all countries. But it is the conditions under which trade takes place and the coherence of trade policies with other complementary policies that will catalyse positive effects. In order to better align trade liberalization approaches with inclusive development imperatives, it is therefore necessary to strengthen coherence in international economic policymaking between trade and development policies.

51. The expected broad-based contribution of trade to various post-2015 sustainable development goals will require the formulation of policies that supporting a positive relationship between trade and related public policies, including social, employment, financial, technological, health, energy, educational, environmental and migration policies. Evolving national policy needs and priorities call for the creation of an enabling international environment, a fair and open trading environment and space for countries to implement such policies, so that trade can flourish and development dividends can be shared equitably among and within countries.

52. At the international level, multilateral cooperation should be pursued and scaled up. The work done by UNCTAD on trade and development during the past 50 years confirm the key role of trade as an engine of growth. Reinvigorating the multilateral trading system as a global public good with renewed impetus, credibility and relevance in the light of the twenty-first century development challenges facing the poorest and most vulnerable towards inclusive and sustainable development is required. Coherence should also be reinforced between multilateral and regional agreements, so that these arrangements, in their totality, can create an effective enabling environment for development.